



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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5/28/2021 12:54 PM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Workers Compensation

TITLE-SERIES: 85-17

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: ELECTRONIC PAYMENTS

CITE STATUTORY AUTHORITY: W. Va. Code §§23-1-1(e), 23-2C-5, 23-2C-8 and 23-3-5.

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2021

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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

SERIES 17
ELECTRONIC PAYMENTS

§85-17-1. General.

1.1. Scope. -- This exempt legislative rule establishes a program to require acceptance of disbursements by electronic transfer from the State-Administered Workers' Compensation Funds to vendors and claimants, pursuant to the provisions of W. Va. Code §23-3-5.

1.2. Authority. -- W. Va. Code §§23-1-1(e), 23-2C-5, 23-2C-8 and 23-3-5. Pursuant to W. Va. Code §23-2C-5(c)(2), rules adopted by the Workers' Compensation Industrial Council are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 *et seq.* Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- May 28, 2021.

1.4. Effective Date. -- July 1, 2021.

§85-17-2. Purpose.

2.1. The purpose of this rule is to implement the provisions of W. Va. Code §23-3-5 and to establish a program to require acceptance of disbursements by electronic transfer from the State-Administered Workers' Compensation Funds to vendors and claimants.

§85-17-3. Definitions.

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

3.1. "Claimant" means an employee of an employer subject to Chapter 23 of the West Virginia Code who has sustained or received a personal injury in the course of and resulting from his or her covered employment, or in the case of death, an employee's dependents, if any, and who makes a timely application for compensation or benefits.

3.2. "State-Administered Workers' Compensation Funds" means the "Old Fund," "Uninsured Employer Fund," "Self-Insured Employer Guaranty Risk Pool," and the "Self-Insured Employer Security Risk Pool," all created pursuant to W. Va. Code §23-2C-6, and further includes the "Coal-Workers' Pneumoconiosis Fund," created pursuant to W. Va. Code §23-4B-2. The State Treasurer is the custodian of the State-Administered Workers' Compensation Funds, and each individual fund is a separate and distinct fund upon the books and records of the State Auditor and State Treasurer. Disbursements from the State-Administered Workers' Compensation Funds are made upon requisition from the Insurance Commissioner to those entitled to receive benefits from the funds.

3.3. An "invoice" is any legal demand, whether written, oral, or by computer-generated medium, for the payment by the Insurance Commissioner to a vendor.

3.4. "Vendor" means any health care provider or other entity who performs a service or provides a thing of value to a claimant or who performs a service or provides a thing of value to the Insurance

Commissioner in relation to the Insurance Commissioner's responsibilities in regard to the State-Administered Workers' Compensation Funds or who performs a service or provides a thing of value to the Insurance Commissioner's third-party administrators in relation to their responsibilities in regard to the State-Administered Workers' Compensation Funds, and who then submits an invoice or otherwise seeks payment from the Insurance Commissioner or the Insurance Commissioner's third-party administrators for the rendering of that service or thing of value.

3.5. "Insurance Commissioner" means the Insurance Commissioner of West Virginia.

3.6. "Private Carrier" means any insurer authorized by the Insurance Commissioner to provide workers' compensation insurance pursuant to Chapters 23 and 33 of the West Virginia Code, but shall not include self-insured employers.

3.7. "Self-insured employer" means an employer who has been granted self-insured status under the provisions of W. Va. Code §23-2-9.

§85-17-4. Electronic Payment to Vendors.

4.1. Any vendor who, on or after August 1, 2021, submits an invoice for payment from one of the State-Administered Workers' Compensation Funds to the Insurance Commissioner, or the Insurance Commissioner's third-party administrator, may be required to receive payment by electronic means if required to do so by the Insurance Commissioner, State Auditor and/or State Treasurer.

4.2. Any vendor who wishes to receive payment from one of the State-Administered Workers' Compensation Funds shall, if required by the Insurance Commissioner, State Auditor and/or State Treasurer, register with the State Auditor's Office to receive payment through the State's Electronic Funds Transfer (EFT) payment system, through the State's purchasing card (P-Card) program or through any other electronic means deemed acceptable. The vendor shall provide such additional information as the Insurance Commissioner, State Auditor and/or State Treasurer may require to effectuate the payments.

4.3. Any vendor 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 Insurance Commissioner, State Treasurer or State Auditor to accept payments by electronic means, may not receive payment on any submitted invoice until such information is provided or cooperation is obtained. The Insurance Commissioner, State Auditor and/or State Treasurer may cease issuing paper checks to vendors seeking payment from the State-Administered Workers' Compensation Funds after August 1, 2021.

§85-17-5. Electronic Payments to Claimants.

5.1. Any claimant receiving payment from a State-Administered Workers' Compensation Fund must, on or before August 1, 2021, register to receive a direct deposit payment through the State's Electronic Funds Transfer (EFT) payment system. This includes payments for permanent total disability benefits, permanent partial disability benefits, temporary total disability benefits and/or dependent's benefits.

5.2. Claimants may register to receive direct deposit payments through the State's Electronic Funds Transfer (EFT) payment system by requesting a direct deposit form from the third-party administrator assigned to their claim or by contacting the Claims Services Division of the Offices of the Insurance Commissioner for assistance.

5.3. Claimants who do not register to receive direct deposit payments through the state's Electronic Funds Transfer (EFT) payment system by completing a direct deposit form on or before August 1, 2021, may be automatically enrolled by the State Auditor in the West Virginia Pay Card Program and may receive a prepaid card in lieu of a paper check or direct deposit. The prepaid card will automatically be reloaded with the claimant's workers' compensation benefit payment every month, or twice a month, in

accordance with the appropriate benefit payment schedule.

5.4. The Insurance Commissioner, State Auditor and/or State Treasurer may cease issuing paper checks to claimants for benefits paid from the State-Administered Workers' Compensation Funds after August 1, 2021.

§85-17-6. Exemptions.

Any vendor or claimant who believes that the imposition of the requirements of all or part of this rule will cause a severe economic hardship or other extreme burden upon that vendor or claimant may file a written petition with the Insurance Commissioner requesting an exemption from all or part of the requirements of this rule. Exemptions are generally discouraged, not guaranteed and shall only be granted at the discretion of the Insurance Commissioner, State Auditor and/or State Treasurer, whichever is applicable.

§85-17-7. Private Carriers and Self-Insured Employers.

This rule shall have no force and effect over private carriers and self-insured employers. However, a private carrier or self-insured employer may establish its own program regarding payment of workers' compensation benefits to claimants or payments of invoices to vendors by electronic means. Nothing herein shall permit any private carrier or self-insured employer to pay a claimant less than the required benefit rate set by statute or pay a provider less than the amount established by the Insurance Commissioner's fee schedule or the rate negotiated pursuant to a preferred provider, managed care, or other medical cost containment relationship with providers of medical, hospital, or other health care as permitted by W. Va. Code § 23-4-3, if applicable.