

PERMANENT RULES OF THE WORKERS' COMPENSATION COMMISSION

Notices of Rulemaking Intent filed on December 21, 2022

PROPOSED RULES:

Chapter 1. General Information

810:1-1-6 [AMENDED]

Chapter 10. Practice and Procedure

Subchapter 1. General Provisions

810:10-1-3 [AMENDED]

810:10-1-12 [AMENDED]

Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners

Part 7. Initial and Subsequent Proceedings

810:10-5-46 [AMENDED]

Part 15. Settlements

810:10-5-95 [AMENDED]

Chapter 15. Medical Services

Subchapter 13. Change of Treating Physician

810:15-13-1 [AMENDED]

810:15-13-2 [AMENDED]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 1. GENERAL INFORMATION

810:1-1-6. Requests for agency public information

(a) Public access to Commission records is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq. and 85A O.S. § 120. Any person making a request for a Commission record shall comply with the following:

(1) The request must be in writing and directed to the Clerk of the Commission when the request is to access information on workers' compensation claims, and to the General Counsel for all other requests.

(2) Requests to access information on workers' compensation claims are subject to the written request and search fee requirements of 85A O.S. § 120, unless an exemption outlined in the law applies. The Commission may request information of a requester sufficient to determine whether or not an exemption pertains.

(A) To access information on workers' compensation claims, the request must be made in writing, on a form prescribed by the Commission. The request form requires identification of the person requesting the information and the person for whom a search is being made. The request form must contain an affidavit signed by the requester under penalty of perjury stating that the information sought is not requested for a purpose in violation of state or federal law. Those making a request shall pay the Commission One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker, plus applicable copy charges set forth in 85A O.S. § 119(A), any applicable fees according to the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and certification fees if any.

(B) Electronic searches of workers' compensation claims data may be made using the CaseOK system from a requester's personal computer or from public terminals at the Commission's offices ~~may be made~~. ~~The search function permits searches using the name of a claimant or the Commission file number. Certain information related to the search criteria will be displayed in the search results on the terminal.~~ Access to additional information on claims pertaining to the search results is subject to the written request and search fee requirements described in this Paragraph.

(C) The one dollar (\$1.00) fee for each page copied, described in 85A O.S. § 119(A), includes physical paper pages copied and digital copies. However, digital copies that are downloaded shall be capped at \$1.00 for the complete download, regardless of how many digital pages are included in the file.

(3) Requests not subject to Paragraph (2) of this Subsection, should describe the record(s) requested, indicate the name of the party making the request, and include the party's mailing address, email address, and telephone number. The requesting party shall pay for copies and research of such records in accordance with 85A O.S. § 119(A) and the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and, if applicable, for certification of the record according to a fee established by the Commission, if any.

(4) Copy charges may be waived at the Commission's discretion for copies requested by the media or by a public officer or public employee in the performance of his or her duties on behalf of a governmental entity.

(b) This Section does not apply to records specifically required by state or federal law, or by state or federal administrative rule, or by order of a court of competent jurisdiction, to be kept confidential, including, but not limited to, financial data obtained by or submitted to the Commission for the purpose of obtaining a license or permit and records subject to proprietary agreements, confidentiality orders and sealed exhibits.

CHAPTER 10. PRACTICE AND PROCEDURE

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-3. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"EDI" means electronic data interchange.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"Electronic equivalent" means a Commission-approved means of filing an electronic form through the Commission's case system. In all cases where a party is required to mail a Commission form to the opposing party, a copy may be sent by electronic mail when an electronic mail address is known. In all cases where a paper form is required to be filed to effect a certain purpose, an electronic equivalent, if available, may also be filed to effect that purpose.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Employee" means any person who meets the definition provided in 85A O.S. § 2(18). For purposes of the agriculture, ranching, or horticulture exempt status defined at 85A O.S. § 2(18)(b)(2), the exemption applies to employees engaged in agriculture, ranching, or horticulture activities as defined.

(A) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (~~including commodities defined as agricultural commodities in section 15(g) of the Federal Agricultural Marketing Act, as amended~~), the raising of livestock, bees, fur-bearing animals, or poultry.

(B) In general, "agricultural or horticultural commodities" refers to commodities resulting from the application of agricultural or horticultural techniques. Insofar as the term refers to products of the soil, it means commodities that are planted and cultivated by man. Among such commodities are the following: Grains, forage crops, fruits, vegetables, nuts, sugar crops, fiber crops, tobacco, and nursery products. Thus, employees engaged in growing wheat, corn, hay, onions, carrots, sugar cane, seed, or any other agricultural or horticultural commodity are engaged in "agriculture." In addition to such products of the soil, however, the term includes domesticated animals and some of their products such as milk, wool, eggs, and honey. The term does not include commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, or by uncultivated natural growth. For example, peat humus or peat moss is not an agricultural commodity.

(C) "Livestock" is confined to the ordinary use of the word and includes only domestic animals ordinarily raised or used on farms. The term includes the following animals, among others: Cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys, and goats. It does not include such animals as albino and other rats, mice, guinea pigs, and hamsters, which are ordinarily used by laboratories for research purposes. Fish are not "livestock", but employees employed in propagating or farming of fish may qualify for exemption.

(D) "Crops" are defined in accordance with 7 C.F.R. § 1437.13.

(E) "Agricultural commodity", as used in this subchapter, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, hemp, aquacultural species (including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment), or any other agricultural commodity, excluding stored grain, determined by the Board, or any one or more of such commodities, as the context may indicate.

(F) The crop, commodity, or livestock grown or raised by the employer must be federally funded and recognized by the United States Department of Agriculture to be eligible to claim this exemption under the AWCA.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mandatory EDI implementation date" means September 1, 2018.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:10-1-12. Prohibited communications

(a) Ex parte communications by an Administrative Law Judge of the Commission with any party, witness or medical provider are proscribed in 85A O.S. § 105, and may subject the Administrative Law Judge to disqualification from the action or matter upon presentation of an application for disqualification.

(b) Parties, attorneys, mediators, case managers, Commission counselors, Commissioners, vocational rehabilitation evaluators, witnesses and medical providers shall have no ex parte

communications with the assigned Administrative Law Judge regarding the merits of a specific matter pending before the judge.

(c) Direct or indirect ex parte communications by a party or their attorney, agent, employees, or anyone else acting on their behalf, with a Commission appointed professional regarding specific cases or claimants are prohibited except as authorized in Paragraph (2) of this Subsection.

(1) For purposes of this Subsection, "Commission appointed professionals" means independent medical examiners, vocational rehabilitation counselors, case managers, and others who have been appointed by the Commission to provide services or treatment to the claimant. The term also includes the office staff of the professional and any physician or chiropractor who accepts a referral from a Commission appointed professional for treatment or evaluation of the claimant when such referral is authorized by the Commission. The term excludes a treating physician or chiropractor selected pursuant to 85A O.S. § 56 regarding change of physician or chiropractor.

(2) The following communications are permitted communications:

(A) Joint letter of the parties requesting information or opinions from the Commission appointed professional after approval by the assigned Administrative Law Judge;

(B) Communication with the staff of a Commission appointed independent medical examiner to schedule or verify an appointment, or to authorize diagnostic testing, treatment or surgery;

(C) Communication with a Commission appointed medical case manager concerning light duty issues consistent with the physician's or chiropractor's restrictions;

(D) Any communication between the claimant and the Commission appointed professional necessary to complete the claimant's treatment, testing or evaluation; and

(E) Communication between Commission appointed professionals.

(3) Failure to comply with this Subsection may, in the discretion of the assigned Administrative Law Judge, result in the imposition of costs, a citation for contempt, or sanctions against the offending party.

(4) Instances of prohibited communications with a Commission appointed professional shall be communicated by the Commission appointed professional to the assigned Administrative Law Judge and all parties or counsel, in writing.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS PART 7. INITIAL AND SUBSEQUENT PROCEEDINGS

810:10-5-46. Evaluation of permanent impairment

(a) **Generally.** Except for scheduled member injuries enumerated in 85A O.S. § 46, evaluations of permanent impairment for injuries occurring on or after February 1, 2014 shall be evaluated as a percentage of whole body impairment, not to exceed 350 weeks, and must be based solely on criteria established by the ~~current~~ edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment listed in 85A O.S. § 45. Deviations from the Guides are permitted only when specifically provided for in the Guides, or

pursuant to an alternative method of evaluation approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides. Such deviations must be medically reasonable and necessary, as shown by clear and convincing evidence.

(b) **Change of condition.** Evaluations of permanent impairment which are prepared in support of a Motion of Change of Condition occurring on or after February 1, 2014 shall be performed using the appropriate edition of the AMA Guides, including any approved alternative method of evaluation developed as provided in 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury.

(c) **Hearing impairment.** The ~~current~~ appropriate edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, or any alternative method approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury, shall be used to evaluate permanent impairment caused by hearing loss where the last exposure occurred on or after February 1, 2014.

Objective findings necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Differences in baseline hearing levels shall be confirmed by subsequent testing given within four (4) weeks of the initial baseline hearing level test.

(d) **Eye impairment.**

(1) The criteria for measuring and calculating the percentage of eye impairment for an injury occurring on or after February 1, 2014 shall be pursuant to this Subsection. A physician may deviate from the method of evaluation provided for in this Subsection or may use some other recognized method of evaluation, if the deviation or the method of evaluation is fully explained.

(2) Physicians should consult the American Medical Association's Guides to the Evaluation of Permanent Impairment regarding the equipment necessary to test eye function and for methods of evaluating vision loss. Evaluation of visual impairment may be based upon visual acuity for distance and near, visual fields and ocular motility with absence of diplopia.

(3) Use of corrective lenses may be considered in evaluating the extent of vision loss, 85A O.S. § 46(E).

PART 15. SETTLEMENTS

810:10-5-95. Joint petition settlements

(a) Under 85A O.S. § 87 and 85A O.S. § 115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the applicable Employer's First Notice of Injury or FROI per 810:10-1-4(a) in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or a Benefit Review Officer.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or Benefit Review Officer of the Commission's Counselor Division, for approval shall be set forth in a

Commission prescribed CC-Joint Petition Settlement, or electronic equivalent. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. § 32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. § 22, Administrative Law Judge of the Commission pursuant to 85A O.S. § 115, or a Commission Benefit Review Officer pursuant to 85A O.S. § 70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. § 115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

- (1) The agreement is unfair, unconscionable, or improper as a matter of law; or
- (2) The agreement is the result of an intentional misrepresentation of a material fact; or
- (3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85A O.S. § 2(33).

(e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the applicable Employer's First Notice of Injury or FROI as provided in 810:10-1-4(a), or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement.

(f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.

(g) No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or when approved by the Commission ~~in cases of extreme circumstances~~.

(h) A stenographic record of the terms and conditions of an approved joint petition settlement and the understanding of the claimant concerning the effect of the settlement must be made by a Commission court reporter and transcribed at the expense of the employer or insurance carrier. The transcript shall be prepared and provided to the parties within ninety (90) days. Medical reports and other exhibits submitted in support of a CC-Joint Petition Settlement shall not be transcribed. The original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Commission file.

(i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.

(j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.

(k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is

fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.

(l) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form CC-Joint Petition Settlement, or electronic equivalent, shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

CHAPTER 15. MEDICAL SERVICES

SUBCHAPTER 13. CHANGE OF TREATING PHYSICIAN

810:15-13-1. Scope

(a) This Subchapter applies to requests to the Commission for a change of treating physician or chiropractor made by a claimant who is not subject to a certified workplace medical plan. These requests are authorized in 85A O.S. § 56(B).

(b) Requests for a change of treating physician or chiropractor sought by an injured employee of an employer that previously contracted with a certified workplace medical plan are not subject to this Subchapter. Such requests must be made by utilizing the plan's dispute resolution process on file with the State Department of Health.

(c) Each certified workplace medical plan shall notify the Executive Director in writing of the plan's appropriate internet website address where its dispute resolution form(s) and current list of providers may be accessed electronically by the general public. A plan shall notify the Executive Director in writing upon a change of the website address where the required information may be accessed.

810:15-13-2. Change of treating physician or chiropractor; no certified workplace medical plan

(a) A claimant seeking a change of treating physician or chiropractor pursuant to 85A O.S. § 56(B) for a work-related injury occurring on and after February 1, 2014, shall file a Commission prescribed Application for Change of Treating Physician with the Commission. Upon such application, the Commission shall grant one (1) change of treating physician or chiropractor. At that time, the employer shall provide the claimant a list of three (3) licensed physicians, one of which may be a chiropractor, from which to select the replacement ~~treating physician~~. Each physician or chiropractor listed shall be qualified to treat the affected body part or condition for which a change of physician or chiropractor is sought.

(b) Nothing in this Section is intended to preclude the parties from agreeing upon a change of treating physician or chiropractor without the necessity of complying with Subsection (a) of this Section, or from utilizing mediation to resolve a request for change of treating physician or chiropractor.