

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 15. PROPERTY AND CASUALTY
SUBCHAPTER 9. MEDICAL PROFESSIONAL LIABILITY RATE SETTING

365:15-9-1. Purpose

The purpose of this subchapter is to set forth rules to carry out the provisions of Section 6821 of Title 36 relating to medical professional liability rate setting.

[Source: Added at 21 Ok Reg 1665 eff 07-14-04]

365:15-9-2. Severability

If any section or portion of a section of this subchapter or its applicability to any person or circumstance is held invalid by a court, the remainder of this subchapter or the applicability of the provision to other persons or circumstances shall not be affected.

[Source: Added at 21 Ok Reg 1665 eff 07-14-04]

365:15-9-3. Notice to Policyholders

(a) Notification to policyholders required pursuant to Section 6821(C) of Title 36 shall be in the form as set out in Appendix D of this Chapter.

(b) Policyholders who are notified of any application for a rate change and the medical malpractice liability insurer making the application for a rate change may submit to the Insurance Commissioner a letter signed by the policyholder waiving the right to request a rate change application hearing pursuant to 36 O.S. § 6821(C)(1).

[Source: Added at 21 Ok Reg 1665 eff 07-14-04; Amended at 22 Ok Reg 2041, eff 7-14-05; Amended 27 Ok Reg 1542, eff 7-14-10]

365:15-9-4. Certified shorthand reporter

(a) The medical professional liability insurer who files a rate change application shall have the responsibility of providing a certified shorthand reporter for a hearing on the rate change application.

(b) The medical professional liability insurer shall notify the Insurance Department of the contact information of the certified shorthand reporter at least seven days prior to the scheduled hearing. The medical professional liability insurer's choice of certified shorthand reporter must be acceptable to the Insurance Department. The medical professional liability insurer shall provide a written copy of the hearing transcript to the Insurance Department as soon as the transcript becomes available.

[Source: Added at 21 Ok Reg 1665 eff 07-14-04]

365:15-9-5. Purchasing Groups

Purchasing Groups as defined by Section 6453 of Title 36 shall be exempt from the provisions of Section 6821 of Title 36 and this subchapter.

[Source: Added at 21 Ok Reg 1665 eff 07-14-04]

365:15-9-6. Rating Organizations

Rating and advisory organizations as defined by Section 982 and licensed pursuant to Section 991 of the Commercial Property and Casualty Competitive Loss Cost Rating Act, 36 O.S. §§ 981-998, shall be exempt from the provisions of Section 6821 of Title 36 and this subchapter. However, insurers who use information provided by a rating and advisory organization that has the result of increasing rates charged for medical professional liability insurance shall not be exempt from the provisions of Section 6821 of Title 36.

[Source: Added at 21 Ok Reg 1665 eff 07-14-04]

365:15-9-6.1. Umbrella medical professional liability coverage.

An umbrella policy which includes medical professional liability losses is not required to comply with the requirements of Sections 6810 through 6821 of Title 36.

[Source: Added at 22 Ok Reg 2041, eff 07-14-05]

365:15-9-7. Right to Appeal.

Medical professional liability insurers shall have the right to appeal a final order of the Commissioner pursuant to the Oklahoma Administrative Procedures Act.

[Source: Added at 21 Ok Reg 1665 eff 07-14-04]

365:15-9-8. Miscellaneous.

Supplementary rating information as defined by Section 982 and filed by insurers with the Property and Casualty Division shall remain under the authority of the Property and Casualty Competitive Loss Cost Rating Act, 36 O.S. §§ 981-998.

[Source: Added at 21 Ok Reg 1665 eff 07-14-04; Amended at 22 Ok Reg 2041, eff 7-14-05]

365: 15-9-9. Rate change application is a public record.

All parts of a rate change application submitted by an insurer pursuant to 36 O.S. § 6821 shall be a public record upon receipt by the Insurance Department. An insurer may not make an assertion of confidentiality for any part of a rate change application.

[Source: Added at 22 Ok Reg 2041, eff 07-14-05]

365:15-9-10. Property and casualty rate, loss cost and manual rule filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting rate, loss costs and manual rule filings to the Insurance Commissioner, which are submitted under the authority of 36 O.S. § 6821.

(b) **Procedures.** Rate, loss costs and manual rules and revisions by insurance companies and advisory organizations licensed in Oklahoma shall be submitted in

compliance with this section or shall be rejected for filing. If a filing is rejected, the entity that made such submission shall be notified.

(1) **Filing requirements.** The rate, loss cost and manual rule filings allowed by this section are for medical professional liability insurance. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed advisory organization which makes such filings.

(2) **Filing fees.**

(A) Rate, loss cost and manual rule filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112.

(4) **Number of copies.** All filings except those exempted shall be submitted through the System for Electronic Rate and Form Filing (SERFF) pursuant to SERFF General Instructions. All paper filings including the cover letter, all exhibits, rate sheets and additional information submitted to the Insurance Commissioner shall be submitted with one (1) legible copy of all material. Companies that file as a group and list all companies on the transmittal letter may accomplish this requirement by submitting one (1) typewritten or printed legible copy of all material. .

(5) **Effective date of filings.** The effective date of rate, loss cost and manual rule filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken through the System for Electronic Rate and Form Filing (SERFF). Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to life, accident and health insurance. Life, accident and health insurance filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted that arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

- (10) **Filing form and content.** All filings shall include the following:
- (A) The name of the filing entity and complete mailing address to which correspondence shall be sent.
 - (B) A RE or caption briefly describing the content and context of the filing.
 - (C) A list or index of the manual pages filed in the filing letter or attached thereto including the page numbers and edition date, if applicable.
 - (D) A complete description and full explanation of the changes made by the filing including reasoning therefor, illustrative examples, including John Doe specimen examples, and a comparison of currently approved and proposed materials (side by side comparison).
 - (E) A concise statement identifying the manual pages (rate and or rule) to be replaced by the filing. The statement shall include the approval date in this jurisdiction and the identifying Oklahoma Insurance Department's assigned filing number of the filing containing the documents to be replaced .
 - (F) Completed transmittal forms and exhibits.
- (11) **Bureau deviations.** Every member of, or subscriber to, a licensed advisory organization may adhere to any filings made on its behalf by its rating organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the rating organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07; Amended at 27 Ok Reg 1542, eff 7-14-10; Amended at 30 Ok Reg 1785, eff 7-14-13]

365:15-9-11. Duration of filings

Approved rates for medical professional liability insurance shall be effective until amended or withdrawn by the insurer.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-12. Forms governed by Article 36

Policy forms, endorsements, and other forms used for medical professional liability insurance shall be filed in compliance with the applicable provisions of Article 36 of the Insurance Code. The forms shall be filed separately from rates and manual rules.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-13. Group filings

Filings made on behalf of more than one insurer shall list the insurer or insurers individually and not by company group.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-14. Independent filings

(a) Independent filers shall file rates, loss costs, rating plans or rating systems, schedules, manuals, and other materials with the Insurance Commissioner and designate them as independent filings.

(b) Independent filers shall file data and experience in support of each filing in accordance with these rules.

(c) Independent filers shall file rate and loss cost revisions with the Insurance Commissioner.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-15. Reference filings

(a) Advisory organization filings.

(1) **Filings permitted without reference filing agreements.** Advisory organization manuals, materials, and forms used in whole or in part may be adopted by members of or subscribers to a licensed advisory organization by reference filings subject to review by the Insurance Commissioner. When making a reference filing, a filing memorandum shall be submitted, identifying the manuals, rules, or forms used and the Oklahoma filing number. Rate departures and rule exceptions, if any, shall be accompanied by the necessary supporting data. Such adoption shall apply only to current filings and shall have no automatic effect as to future filings. Each advisory organization filing shall be separately and specifically adopted.

(2) **Filings permitted with reference filing agreement.** Approved advisory organization manuals, material and forms may be adopted by members of or subscribers to a licensed advisory organization by filing a reference filing agreement with the Insurance Commissioner identifying the manuals, material or forms to be used and the Oklahoma filing number. Such adoption shall apply from the date it is filed with the Insurance Commissioner to filings in effect on that date and to all applicable future filings. The reference filing agreement shall remain in effect until such time as the agreement is withdrawn as a filing with the Insurance Commissioner. Manuals shall not be filed if filings are made by reference filing.

(b) Other than Advisory organization filings. An insurer may adopt another insurer's filing by filing rates on the filing insurer's format and by advising the Insurance Commissioner of the name(s) of the insurer whose program is being copied, the Oklahoma filing number, and the date(s) the program was filed for that insurer. Unless an exception is granted by the Insurance Commissioner, this procedure applies only to the initial filing of the program for the "adopting" insurer and is subject to the review of the Insurance Commissioner. Reference filings for previously approved rates for medical professional liability insurance are not allowed.

(c) **Reference filings.** References filings to previously approved rates for medical professional liability insurance are not allowed.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-16. Members of or subscribers to a licensed advisory organization

(a) **Filings.** A licensed advisory organization may make filings on behalf of its members and subscribers except deviation and rate filings.

(b) **Adherence to filings.** Every member of or subscriber to a licensed advisory organization may adhere to the filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings upon compliance with the rules of this chapter and review of the Insurance Commissioner where required by the Insurance Code.

(c) **Individual company filings.** Members and subscribers shall not file individual manuals that have been filed on their behalf by the appropriate advisory organization.

(d) **Filing requirements; loss cost deviations.** When loss cost deviations are proposed, the filing memorandum shall indicate the applicable advisory organization filing, the Oklahoma filing number, and state the percentage of deviation, as well as the subject matter the deviation applies to by manual name, page number and supporting date in accordance with the rules of this chapter. Copies of all such information shall be furnished to the appropriate advisory organization.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-17. Resubmittal of disapproved or rejected filings.

All resubmitted filings shall be presented to the Insurance Commissioner in the same manner required by this subchapter for an original filing. In addition, the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for the disapproval, and the factors that distinguish the resubmittal to warrant reconsideration.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-18. Statistical plans

(a) Every insurer doing business in this state shall file a statistical plan and any modifications thereto with the Oklahoma Insurance Department.

(b) The statistical plan shall record the loss and expense experience of the insurer and shall provide all data elements necessary to support the rating systems the insurer has filed with the Oklahoma Insurance Department. The experience developed in accordance with an approved statistical plan shall be filed on a yearly basis.

(c) An insurer may appoint a registered advisory organization as its agent to report and file its statistical plan and experience.

(d) The Insurance Commissioner may approve an advisory organization as a statistical agent to gather, record, compile, and report experience in such manner, form, and detail determined by the Insurance Commissioner as necessary to determine whether

rating systems comply with the standards of the Property and Casualty Competitive Loss Cost Rating Act and Section 6821 of Title 36 of the Oklahoma Statutes.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07; Amended at 27 Ok Reg 1542, eff 7-14-10]

365:15-9-19. Outside Review

(a) The Insurance Commissioner shall have the authority to hire statisticians, accountants, attorneys, auditors, investigators or any other person the Insurance Commissioner deems necessary or beneficial to aid in review or examination of any filings for rate revision made by insurers or advisory organizations.

(b) Persons listed in paragraph (a) of this section shall be fully accredited and or licensed in their field of expertise and may be employees of corporations, partnerships or individuals duly qualified to provide required services.

(c) The Insurance Commissioner may retain an actuary to review a filing when deemed necessary or beneficial by the Insurance Commissioner based on one or more of the following criteria:

- (1) Significant premium and or percentage effect;
- (2) Significant market share as determined from market share report;
- (3) Staff unfamiliar with actuarial methodology;
- (4) Filing establishes a benchmark;
- (5) Actuarial review necessitated by filer's inability to comply with filing requirements;
- (6) Review of the adequacy of the proposed filing; and
- (7) Review of whether the proposed filing constitutes discrimination as described by 36 O.S. § 985(A)(3).

(d) When a filing is referred to an outside consultant for review, an engagement letter shall be presented to the consultant specifying the scope of review. The filer shall be notified of the review.

(e) All reasonable expenses incurred in such filing review shall be paid by the insurer or advisory organization making the filing.

(f) The Insurance Commissioner shall consider the opinion of the consulting actuary and any other evidence submitted in support of the filing and shall accept or reject the consulting actuary's opinion in whole or in part based on such other evidence.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-20. Individual risk rating plans

Individual risk rating plans shall comply with the following requirements:

- (1) Each individual risk rating plan shall establish standards that bear a relationship to the variation in hazard and or expense to be measured.
- (2) Any individual risk rating plan shall be applied by company representatives responsible for underwriting the risk(s) involved.
- (3) Each insurer utilizing such plans shall obtain all information necessary to determine the proper applications of such plans to any particular risk. Such

supporting information shall be retained by the insurer for three (3) years and made available to the Insurance Department upon its request.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-21. Waiver of Premium

Insurers may waive additional premium due from an insured. An insurer may also waive the return premium due to an insured. However, any return premium shall be returned to the insured upon request. The amount to be waived for both the additional premium and the return premiums shall be shown on a manual rule page and filed with the Insurance Commissioner.

[Source: Added at 24 Ok Reg 2209, eff 07-14-07]

365:15-9-22. Withdrawal or discontinue writing

Any insurer desiring to withdraw from the state or discontinue the writing of medical malpractice insurance or programs in this state or transferring policyholders between admitted companies within the same insurance holding company system shall give ninety (90) days notice in writing to the Rate and Form Compliance Division of the Insurance Department. The insurer shall state in writing its reasons for such action. The ninety (90) day notice is inclusive of, and not in addition to, any other notice requirement per line of business. The insurer shall also provide the following information:

- (1) The number of policyholders affected;
- (2) The number of insurance agents affected;
- (3) The date the insurer will cease writing new business;
- (4) The date the insurer will start non-renewing insurance policies;
- (5) Whether the insurer has made arrangements with another insurer to cover the renewals;
- (6) The lines of insurance on which the insurer plans to concentrate; and
- (7) Whether the insurer anticipates re-entering the market.

[Source: Added at 28 Ok Reg 1542, eff 7-14-10]