

PROPOSED EMERGENCY RULES OF THE WORKERS' COMPENSATION COMMISSION

Revised June 13, 2018

Public comments may be submitted through July 13, 2018 at rules@wcc.ok.gov

Proposed Emergency Rules:

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

810:1-1-2. 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:

"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.

"Affidavit of Exempt Status" means an affidavit authorized by 85A O.S., §36 which any individual or business entity that is not required to secure compensation pursuant to the AWCA may execute and file with the Oklahoma Workers' Compensation Commission.

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

~~**"Certificate of noncoverage"** or **"CNC"** means a certificate issued by the Oklahoma Workers' Compensation Commission after proper application and reasonable investigation to a sole proprietor or the partners of a partnership who do not elect to be covered by the AWCA.~~

"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.

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

"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).

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

"EDI" means electronic data interchange.

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

"FROI" means first report of injury.

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

"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.

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

"Workers' Compensation Commission 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.

810:1-1-3. General description of the Oklahoma Workers' Compensation Commission

(a) **History.** The Oklahoma Workers' Compensation Commission was created pursuant to legislation enacted in 2013 and is responsible for administration of the Administrative Workers' Compensation Act, 85A O.S. § 1, et seq., except as otherwise provided by law.

(b) **Composition.** The Commission is comprised of three members who are appointed by the Governor and confirmed by the Senate for staggered terms. The initial appointments are for two (2), four (4) and six (6) years respectively, as determined by the Governor. Subsequent terms are for six (6) years. One of the initial appointments must be from a list of three (3) nominees selected by the Speaker of the Oklahoma House of Representatives. The Chair of the Commission is appointed by the Governor from among the Commission members. The Chair organizes, directs and develops administrative work, employs administrative staff within budgetary limitations, and performs other duties authorized by law or prescribed by the Commission. The Commission appoints an administrator who is the administrative officer of the Commission and manages the activities of its employees and performs other duties prescribed by the Chair or Commission. The title of the administrative officer shall be Executive Director. The Commission may appoint as many Administrative Law Judges and other personnel as necessary within budgetary limitations to effectuate the AWCA.

(c) **Duties.** It is the Commission's responsibility to apply the law as set out in the AWCA. The Commission has adjudicative, administrative and regulatory functions. Those functions include providing fair and timely procedures for the resolution of workers' compensation disputes; monitoring claims and benefit payments to injured workers, processing settlements and requests for changes in physicians; ensuring that employers maintain required insurance coverage; ~~issuing certificates of noncoverage to eligible applicants;~~ processing [Affidavits of Exempt Status and Cancellations of Affidavits of Exempt Status](#); and approving applications of employers to act as self-insurers; processing and approving applications related to independent physicians, mediators and case managers; developing and maintaining a workers' compensation fee schedule; providing legal information and assistance to interested persons who have questions concerning the Oklahoma workers' compensation law; and participating in programs to explain the law and functions of the Commission to the general public.

(d) **Main offices of Commission.** The main offices of the Commission are located at: Denver Davison Building, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105.

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 10. PRACTICE AND PROCEDURE**

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 17. FEES

810:10-5-105. Fees

Fees payable to the Commission include:

- (1) A fee of One Thousand Dollars (\$1,000.00), payable by each carrier writing worker's compensation insurance in this state, upon securing a license to transact business in this state [85A O.S. § 29(A)];
- (2) A fee of One Thousand Dollars (\$1,000.00), payable by each self-insurer at the time it is approved to self-insure its obligations under the AWCA [85A O.S. § 29(B)];
- (3) An annual fee of One Thousand Dollars (\$1,000.00), payable by third-party administrators [85A O.S. § 29(C)];
- (4) A fee of One Hundred Seventy-five Dollars (\$175.00), payable by a party appealing an order or award of an Administrative Law Judge to the Commission en banc [85A O.S. § 78(B)];
- (5) A fee of One Hundred Dollars (\$100.00), for compiling and transmitting a record for appeal of a Commission order to the Oklahoma Supreme Court, payable by the appealing party [85A O.S. § 78(D)];
- (6) A fee of One Hundred Forty Dollars (\$140.00), payable by the party against whom an award becomes final (i.e. the employer or insurance carrier if there is an award of compensation, or the worker if there is a denial or dismissal of a claim for compensation) [85A O.S. § 118(A)]. Ten Dollars (\$10.00) of the fee is payable by the Commission to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund;
- (7) A fee of One Hundred Thirty Dollars (\$130.00), payable by the worker if the reopen request is to reopen on a change of condition for the worse, or payable by the employer or insurance carrier if the reopen request is to reopen on a change of condition for the better [85A O.S. § 118(B)];
- (8) A fee of One Dollar (\$1.00) per page, payable as a copy charge [85A O.S. § 119(A)];
- (9) A fee of One Dollar (\$1.00) per search request for prior claims records, not to exceed One Dollar (\$1.00) per claims record of a particular worker [85A O.S. § 120(B)];
- (10) A fee of Forty-five Dollars (\$45.00), plus postage, if any, for a Commission handbook [85A O.S. § 20(B)]; and
- (11) A fee of Fifty Dollars (\$50.00), payable by ~~an applicant requesting a Certificate of Noncoverage or a renewal thereof~~ any individual or business entity filing an Affidavit of Exempt Status or a renewal thereof [85A O.S., § ~~36(D)(2)~~ 36(D)]; and
- (12) Such other fees as may be allowed by law or this Title.

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 25. WORKERS' COMPENSATION INSURANCE AND SELF INSURANCE**

SUBCHAPTER 1. GENERAL PROVISIONS

810:25-1-1. Purpose

This Chapter establishes procedures and standards for proof of coverage (85A O.S., § 42); ~~issuance of certificates of noncoverage~~ filing of Affidavits of Exempt Status and Cancellations of Affidavit of Exempt Status (85A O.S., § 36); regulation of individual own risk employers, group self-insurance associations and third-party administrators for workers' compensation purposes (85A O.S., §§ 22, 29, 38, 102 and 103); and enforcement of workers' compensation insurance requirements (85A O.S., § 40), as authorized in the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

810:25-1-2. 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:

"Administrator" means the person designated by the supervisory board of members of a group self-insurance association to oversee the financial affairs of the association, accept service of process on behalf of the association, act for and bind the association and members in all transactions either relating to or arising out of the operation of the association.

"Advisory loss costs" means the National Council on Compensation Insurance's projections of future claims costs and loss adjustment expenses by classification code.

"Affidavit of Exempt Status" means an affidavit authorized by 85A O.S., §36 which any individual or business entity that is not required to secure compensation pursuant to the AWCA may execute and file with the Oklahoma Workers' Compensation Commission.

"Aggregate excess insurance" means an insurance product that limits a group self-insurance association's annual aggregate liability to an agreed upon amount.

"Association" or **"Group Self-Insurance Association"** means a duly qualified group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

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

"Board" or **"Members' Supervisory Board"** means the supervisory board of members of an association.

"Cancellation short rate penalty" means a penalty imposed on the member for cancelling its policy before the expiration date of the policy.

~~**"Certificate of noncoverage"** or **"CNC"** means a certificate which may be issued by the Oklahoma Workers' Compensation Commission prior to August 2, 2018 and after proper application and reasonable investigation to a sole proprietor or the partners of a partnership who do not elect to be covered by the AWCA.~~

"Certified audit" means a financial audit performed by a certified public accountant, accompanied by the auditor's opinion regarding the audit.

"Claims reserves" means workers' compensation claim losses expected to be paid in the future, but does not include IBNR.

"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).

"Common interest" means employers engaged in the same industry or members of an Oklahoma trade association that has been in business for at least five (5) years.

"Expense constant" means a flat charge included in a workers' compensation policy to cover the

costs of issuing and servicing the policy.

"Experience modifier" means a modification to premium based on the claims history of the policyholder.

"IBNR" means incurred but not reported reserves. It includes a reserve for claims that have been incurred, but not yet reported to the individual own risk employer or group self-insurance association, as applicable, and reserves for adverse loss development on known claims.

"Incurred loss" means the total of the paid indemnity and medical losses plus claims reserves, reported by accident year.

"Insurance Department" means the Insurance Department of the State of Oklahoma.

"Joint and several liability" means mutual and individual responsibility of members for the liabilities of the association.

"Loss portfolio transfer" means the transfer of the liabilities of the association to an insurance carrier for an agreed upon premium.

"Member" means an individual member of an association.

"NCCI" means the National Council on Compensation Insurance, a national source for information on workers' compensation insurance, tools and services, and the provider of advisory ratemaking and statistical services in Oklahoma.

"Partnership" means a type of unincorporated business organization in which two or more individuals own the business and are equally liable for its debts.

"Pro forma financial statement" means a hypothetical financial statement showing revenues and expenses that may be recognized in the upcoming fiscal year.

"Proof of coverage" means the statutory filings of workers' compensation policy information to the NCCI.

"Scopes Manual" is a catalog of four-digit workers' compensation codes based on the nature of business and estimated risk to its workers.

"Self insured retention" means the individual own risk employer's or group self-insurance association's retained amount of risk under a specific excess insurance policy, before the liability is transferred to an insurance carrier.

"Sole proprietor" means an individual (or married couple) who is sole owner of a business that is neither a partnership nor an incorporated or limited liability company.

"Solvency" means a member whose assets are greater than its liabilities and who is capable of meeting its financial obligations to the association.

"Specific excess insurance" means an insurance product that limits the liability of an individual own risk employer or group self-insurance association specific occurrence liability to an agreed upon amount.

"Standard premium" means experience modified workers' compensation premium that has not been discounted.

"Statutory limits" means an insurance carrier's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.

"TPA" or "Third-Party Administrator" means any person defined in 36 O.S., § 1442 of the Third-Party Administrator Act as an "administrator".

"Unearned premium" means the share of the members' premiums applicable to the unexpired portion of the policy terms.

810:25-1-3. Proceedings related to permit actions

The Commission may deny an application, refuse to issue or renew, or revoke a ~~Certificate of Noncoverage (Subchapter 5 of this Chapter), or a~~ permit for Individual Own Risk Employer (Subchapter 9 of this Chapter), Group Self-Insurance Association (Subchapter 11 of this Chapter) or Third-Party

Administrator (Subchapter 13 of the Chapter) as provided in this Chapter. Proceedings related to such Commission actions shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.

SUBCHAPTER 5. DOCUMENTATION OF EXEMPT STATUS

810:25-5-1. ~~Certificate of noncoverage~~ Affidavit of Exempt Status requirements

(a) ~~To request a CNC as authorized by~~ Any individual or business entity that is not required to secure compensation under the AWCA, upon payment to the Commission of a nonrefundable filing fee of Fifty Dollars (\$50.00), may execute and file an Affidavit of Exempt Status authorized in 85A O.S., §36, ~~an individual doing business as a sole proprietor or the partner of a partnership who does not elect to be covered by the AWCA and be deemed an employee thereunder, shall:~~

(1) ~~Submit a signed and completed Application for Certificate of Noncoverage on a form prescribed by the Commission, to~~ in duplicate, with the Commission at the following address: Oklahoma Workers' Compensation Commission, Attention: ~~INSURANCE DIVISION~~, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105, or may file the affidavit electronically at www.ok.gov/wcc. The application affidavit shall be ~~notarized and signed by the applicant~~ affiant under penalty of perjury. ~~Illegible, incomplete or unsigned applications will not be considered and shall be returned.~~ A copy of the application Affidavit of Exempt Status form may be obtained from the Commission at the address set forth in this Paragraph Subsection, or from the Commission's website;

(2) ~~Pay to the Commission a nonrefundable application fee of Fifty Dollars (\$50.00) with the Application for Certificate of Noncoverage. The fee may be charged and shall be collected from each individual who applies for a CNC;~~

(3) ~~Provide such substantiating documentation in support of the application as may be required by the Commission; and~~

(4) ~~Verify that the applicant will notify the Commission in writing upon any change affecting the applicant's qualifications as provided in this Subsection.~~

(b) ~~The application shall be reviewed by the Commission's Insurance Division. If the application is determined to be sufficient, the Division will issue a Certificate of Noncoverage, for a period of two years. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time from the Division, the application will be denied~~ An Affidavit of Exempt Status executed and filed as provided in this Rule shall expire at midnight two (2) years from the date of filing, unless earlier cancelled by the filing, in accordance with 85A O.S., § 36(D)(1)(b), of a Cancellation of Affidavit of Exempt Status (CC-Form-36C) upon changed circumstances that make securing compensation pursuant to the AWCA necessary.

810:25-5-2. ~~Revocation of certificate of Noncoverage~~ [REVOKED]

~~The Commission may revoke a CNC for cause, including, but not limited to, material misrepresentation on the CNC application, or refusal or substantial failure of the CNC holder to notify the Commission of any change affecting the holder's qualifications as provided in 810:25-5-1.~~

810:25-5-3. Renewal process

An unexpired Affidavit of Exempt Status may be renewed by filing a new Affidavit of Exempt Status before expiration. The criteria for renewal ~~of a certificate of noncoverage~~ shall be the same as that for a new applicant Affidavit of Exempt Status, as provided in 810:25-5-1(a).