

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; 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.

"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 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 this 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 requirements

(a) To request a CNC as authorized by 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 the following address: Oklahoma Workers' Compensation Commission, Attention: INSURANCE DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The application shall be notarized and signed by the applicant under penalty of perjury. Illegible, incomplete or unsigned applications will not be considered and shall be returned. A copy of the application form may be obtained from the Commission at the address set forth in this Paragraph, 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.

810:25-5-2. Revocation of certificate of noncoverage

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

The criteria for renewal of a certificate of noncoverage shall be the same as that for a new applicant.

SUBCHAPTER 7. ENFORCEMENT OF WORKERS' COMPENSATION INSURANCE REQUIREMENTS

810:25-7-1. Proof of insurance

(a) Whenever the Commission has reason to believe that an employer is required to secure the payment of compensation under the AWCA and has failed to do so, the Commission may make reasonable inquiry of the employer, issue subpoenas and demand proof of current workers' compensation insurance coverage compliant with 85A O.S., § 38 or documentation substantiating the employer's exemption from coverage requirements. Subpoenas issued under this Section shall be governed by 810:10-5-31.

(b) As authorized in 85A O.S., § 40, if no proof of insurance or exemption is provided; or the documentation offered does not substantiate a claimed exemption or is not current, valid proof of insurance in accordance with 85A O.S., § 38; or the employer fails to respond in a timely manner, the Commission shall serve on the employer a proposed judgment declaring the employer to be in violation of the workers' compensation insurance coverage requirements mandated by law and assess a monetary fine against the employer in an amount not to exceed One Thousand Dollars (\$1,000.00) per day of violation.

SUBCHAPTER 9. INDIVIDUAL OWN RISK EMPLOYER PERMIT

810:25-9-13. Notification of changed status

An individual own risk employer must notify the Commission in advance of any change in its financial condition, such as a bankruptcy filing or negative net income for a fiscal year, or ownership in the interim period between applications, ~~such as a net financial loss or a potential bankruptcy, which may impact the employer's financial ability to pay its compensation.~~ Failure to notify the Commission in a timely manner may result in revocation of the own risk permit. If there is a change in majority ownership of an individual own risk employer, the own risk privilege granted to the employer shall be at the discretion of the Commission and the new entity shall be required to qualify under this Subchapter.

810:25-9-15. Assessments

An individual own risk employer must pay all applicable Multiple Injury Trust Fund assessments (85A O.S., § 31) and all Self Insurance Guaranty Fund assessments (85A O.S., § 98), when due and timely report payment thereof to the Commission as prescribed by law. Failure to do so is grounds for revocation of the individual own risk employer permit, imposition of fines by the Commission, or both revocation and fines. No report to the Commission or Insurance Department shall be required where no payment is due.

SUBCHAPTER 13. THIRD-PARTY ADMINISTRATOR PERMIT FOR WORKERS' COMPENSATION PURPOSES

810:25-13-4. Operating requirements

The TPA must:

- (1) Have adequate personnel on staff to handle the volume and type of work. The TPA may subcontract for services not provided by the TPA, but requested from the self-insurer;
- (2) Be financially solvent, and must report its financial statements on an annual basis to the Commission in an approved form and manner;
- (3) Maintain an adequate Errors and Omissions policy;
- (4) Maintain an adequate Fidelity Bond;
- (5) Establish claims reserves at the most likely outcome. Best case reserving is not allowed.
- ~~(6) Undergo a triennial audit of its claims handling, claims reserving, and internal controls, by independent professionals;~~
- ~~(7)~~(6) Retain its independence when setting claim reserves. The TPA shall not let the self-insurer influence the amount of the reserve or the closing of a claim;
- ~~(8)~~(7) Maintain an Oklahoma office, if handling a group self-insurance association program; and
- ~~(9)~~(8) Maintain adequate computerized records and paper claims files on each claim. A copy of this information must be made available for the Commission's review at all times upon request.