

Dear Senators ANDREASON, Coiner & Malepeai, and
Representatives SCHAEFER, Marriott & Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Industrial Commission:

1. **IDAPA 17.02.03 – Administrative Rules of the Industrial Commission Under the Workers’
Compensation Law – Security For Compensation - Docket No. 17-0203-1001;**
2. **IDAPA 17.02.08 – Miscellaneous Provisions – Docket No. 17-0208-1001;**
3. **IDAPA 17.02.08 – Miscellaneous Provisions – Docket No. 17-0208-1002;**
4. **IDAPA 17.02.09 – Medical Fees – Docket No. 17-0209-1001;**
5. **IDAPA 17.02.10 – Administrative Rules of the Industrial Commission Under the Workers’
Compensation Law – Security For Compensation – Insurance Carriers -
Docket No. 17-0210-1001;**
6. **IDAPA 17.02.11 – Administrative Rules of the Industrial Commission Under the Workers’
Compensation Law – Security For Compensation – Self-Insured Employers -
Docket No. 17-0211-1001.**

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
co-chairmen or by two (2) or more members of the subcommittee giving oral or written notice to
Research and Legislation no later than fourteen (14) days after receipt of the rules’ analysis from
Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-25-10.
If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of
the rules’ analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is
11-23-10.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this
statement, and it may be requested whether or not a meeting on the proposed rule is called or after a
meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or
FAX number indicated on the memorandum attached.



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Human Resources Committee

FROM: Katharine Gerrity, Principal Legislative Research Analyst **KAG**

DATE: October 5, 2010

SUBJECT: Industrial Commission

- 1. IDAPA 17.02.03 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation - Docket No. 17-0203-1001**
- 2. IDAPA 17.02.08 – Miscellaneous Provisions – Docket No. 17-0208-1001**
- 3. IDAPA 17.02.08 – Miscellaneous Provisions – Docket No. 17-0208-1002**
- 4. IDAPA 17.02.09 – Medical Fees – Docket No. 17-0209-1001**
- 5. IDAPA 17.02.10 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation – Insurance Carriers - Docket No. 17-0210-1001**
- 6. IDAPA 17.02.11 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation – Self-Insured Employers - Docket No. 17-0211-1001**

1. IDAPA 17.02.03 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation

The Industrial Commission submits notice of proposed rule at IDAPA 17.02.03 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation. This is a chapter repeal. According to the Commission, the rule is being repealed and two new chapters are being adopted to clarify the rules for insurance carriers

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Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

(17.02.10) and self-insured employers (72.02.11). (See paragraphs 5 and 6 of this memo). The Commission notes that negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of the rule revisions.

The rule appears to be authorized pursuant to Sections 72-508, 72-520, 72-721, 72-722 and 72-723, Idaho Code.

2. IDAPA 17.02.08 – Miscellaneous Provisions

The Industrial Commission submits notice of proposed rule at IDAPA 17.02.08 – Miscellaneous Provisions. This is a chapter repeal. According to the Commission, the rule is being repealed and rewritten and separated into two chapters with one new chapter (17.02.09) dealing with medical fees. The Commission states that this chapter (17.02.08) is being rewritten and contains the balance of the rule without substantive change. Negotiated rulemaking was not conducted. The Commission, however, states that the data was submitted to several affected parties, such as hospitals and ambulatory surgery centers, for comment and that those comments were included in the final analysis that resulted in the rule.

The rule appears to be authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, Idaho Code.

3. IDAPA 17.02.08 – Miscellaneous Provisions

The Industrial Commission submits notice of proposed rule at IDAPA 17.02.08 – Miscellaneous Provisions. This is a chapter rewrite (see paragraph two above). According to the Commission, the rule is being rewritten because the medical fee provisions that were previously in this rule are being separated out into a new chapter 17.02.09. The Commission states that this rewritten chapter contains the balance of the original rule without substantive change. Negotiated rulemaking was not conducted. The Commission, however, states that the data was submitted to several affected parties, such as hospitals and ambulatory surgery centers, for comment and that those comments were included in the final analysis that resulted in the rule.

The rule appears to be authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, Idaho Code.

4. IDAPA 17.02.09 – Medical Fees

The Industrial Commission submits notice of proposed rule at IDAPA 17.02.09 – Medical Fees. This is a new chapter. According to the Commission, this rule adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. The Commission states that this new chapter also provides a new workers' compensation fee schedule for hospitals and ambulatory

surgery centers. We contacted the Commission to get some additional information regarding this new fee schedule for hospitals and ambulatory surgery centers. Commission personnel indicate that the new provisions are a variation of the payment method that Medicare uses so there is some familiarity with the process and that it provides more predictability for all parties.

Negotiated rulemaking was not conducted but the Commission states that the data was submitted to several affected parties, such as hospitals and ambulatory surgery centers, for comment and that those comments were included in the final analysis that resulted in the rule.

The rule appears to be authorized pursuant to Sections 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, Idaho Code.

5. IDAPA 17.02.10 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation – Insurance Carriers

The Industrial Commission submits notice of proposed rule at IDAPA 17.02.10 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation – Insurance Carriers. This is a new chapter. According to the Commission, IDAPA 17.02.03 (Security For Compensation) is being repealed and split into two new chapters – one for Insurance carriers (this rule) and one for self-insured employers (IDAPA 17.02.11). The Commission states that this action will clarify each entity’s rules. The Commission also states that this rule, governing insurance carriers, clarifies terms and implements more comprehensive reporting requirements.

The Commission notes that negotiated rulemaking was not conducted because a subcommittee of the Commission’s Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of the rule revisions.

The rule appears to be authorized pursuant to Sections 72-508, 72-520, 72-721, 72-722 and 72-723, Idaho Code.

6. IDAPA 17.02.11 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation – Self-Insured Employers

The Industrial Commission submits notice of proposed rule at IDAPA 17.02.11 – Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security For Compensation – Self-Insured Employers. This is a new chapter and is a fee rule. According to the Commission, IDAPA 17.02.03 (Security For Compensation) is being repealed and split into two new chapters – one for Insurance carriers (IDAPA 17.02.10 – see paragraph 5 of this memo) and one for self-insured employers (this rule). The Commission states that this action will clarify each entity’s rules. The Commission also states that this rule, governing self-insured employers, clarifies terms, provides a more detailed application process and outlines continuing reporting and security deposit requirements necessary to maintain self-insured status.

The Commission states that the fiscal impact to the industrial administration fund under this proposal is nominal due to the implementation of a \$250 application fee for self-insured employers. The Commission also states that self-insured applications average only 2-3 per year.

The Commission notes that negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of the rule revisions.

The rule appears to be authorized pursuant to Sections 72-508, 72-520, 72-721, 72-722 and 72-723, Idaho Code.

cc: Industrial Commission
Mindy Montgomery, Director
Jane McClaran
Patti Vaughn

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.03 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW - SECURITY FOR COMPENSATION

DOCKET NO. 17-0203-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed in its entirety and two new chapters are being adopted to clarify each entity's rules. The new chapter, IDAPA 17.02.10 (Insurance Carriers), adopts rules governing insurance carriers that clarify terms and implements more comprehensive reporting requirements. The new chapter, IDAPA 17.02.11 (Self-Insured Employers), adopts rules governing self insured employers that clarify terms, provide a more detailed application process and outline continuing reporting and security deposit requirements necessary to maintain self insured status.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this September 1, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720, Boise, ID 83720-0041
Phone: 208-334-6000 / Fax: 208-334-5145

IDAPA 17.02.03 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

October 7, 2010 4:00 p.m. – 6:00 p. m.	OCTOBER 12, 2010 4:00 - 6:00 p. m	OCTOBER 19, 2010 2:00 - 5:00 p. m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: IDAPA 17.02.08 is being repealed and rewritten and separated into 2 chapters. A new chapter, IDAPA 17.02.09, Medical Fees, moves the conversion factors into a separate chapter for clarity. This new chapter adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. IDAPA 17.02.08 contains the balance of the rule without substantive change and is being published in this Bulletin under Docket No. 17-0208-1002.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Mindy Montgomery, Director
Industrial Commission
P.O. Box 83720
700 S. Clearwater Lane, Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-2321

IDAPA 17.02.08 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1002 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

October 7, 2010 4:00 p.m. – 6:00 p. m.	OCTOBER 12, 2010 4:00 - 6:00 p. m	OCTOBER 19, 2010 2:00 - 5:00 p. m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The new IDAPA 17.02.09, Medical Fees, which is being published in this Bulletin, adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. IDAPA 17.02.09 also provides a new workers' compensation fee schedule for hospitals and ambulatory surgery centers. Since these adjustments may occur annually, they were split from IDAPA 17.02.08, Miscellaneous Provisions, which is being rewritten in this docket with the balance of the former IDAPA 17.02.08 without substantive changes.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720, Boise, Idaho
83720-0041
Phone: (208) 334-6000 / Fax: (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0208-1002

IDAPA 17
TITLE 02
CHAPTER 08

17.02.08 - MISCELLANEOUS PROVISION

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provision of Section 72-508, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.08, "Miscellaneous Provisions." ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 700 S. Clearwater Lane, Boise, ID 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 032. (RESERVED).

033. RULE GOVERNING APPROVAL OF ATTORNEY FEES IN WORKERS' COMPENSATION CASES.

01. Authority and Definitions. Pursuant to Sections 72-404, 72-508, 72-707, 72-735 and 72-803, Idaho Code, the Commission promulgates this rule to govern the approval of attorney fees. ()

a. "Available funds" means a sum of money to which a charging lien may attach. It shall not include any compensation paid or not disputed to be owed prior to claimant's agreement to retain the attorney. ()

b. “Approval by Commission” means the Commission has approved the attorney fees in conjunction with an award of compensation or a lump sum settlement or otherwise in accordance with this rule upon a proper showing by the attorney seeking to have the fees approved. ()

c. “Charging lien” means a lien, against a claimant’s right to any compensation under the Workers’ Compensation laws, which may be asserted by an attorney who is able to demonstrate that: ()

i. There are compensation benefits available for distribution on equitable principles; ()

ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid; ()

iii. It was agreed that counsel anticipated payment from compensation funds rather than from the client; ()

iv. The claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and ()

v. There are equitable considerations that necessitate the recognition and application of the charging lien. ()

d. “Fee agreement” means a written document evidencing an agreement between a claimant and counsel, in conformity with Rule 1.5, Idaho Rules of Professional Conduct (IRPC). ()

e. “Reasonable” means that an attorney’s fees are consistent with the fee agreement and are to be satisfied from available funds, subject to the element of reasonableness contained in IRPC 1.5. ()

i. In a case in which no hearing on the merits has been held, twenty-five percent (25%) of available funds shall be presumed reasonable; or ()

ii. In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of available funds shall be presumed reasonable; or ()

iii. In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. ()

02. Statement of Charging Lien. ()

a. All requests for approval of fees shall be deemed requests for approval of a charging lien. ()

b. An attorney representing a claimant in a Workers’ Compensation matter shall in any proposed lump sum settlement, or upon request of the Commission, file with the Commission, and serve the claimant with a copy of the fee agreement, and an affidavit or memorandum containing: ()

i. The date upon which the attorney became involved in the matter; ()

ii. Any issues which were undisputed at the time the attorney became involved; ()

iii. The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney’s involvement; ()

iv. Disputed issues that arose subsequent to the date the attorney was hired; ()

- v. Counsel's itemization of compensation that constitutes available funds; ()
- vi. Counsel's itemization of costs and calculation of fees; and ()
- vii. Counsel's itemization of medical bills for which claim was made in the underlying action, but which remain unpaid by employer/surety at the time of lump sum settlement, along with counsel's explanation of the treatment to be given such bills/claims following approval of the lump sum settlement. ()
- viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the charging lien. ()
- c. Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. ()

03. Procedure if Fees Are Determined Not to Be Reasonable. ()

- a. Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Subsection 033.02 may constitute grounds for an informal determination that the fee requested is not reasonable. ()
- b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. ()
- c. The Commission shall order an employer to release any available funds in excess of those subject to the requested charging lien and may order payment of fees subject to the charging lien which have been determined to be reasonable. ()
- d. The proponent of a fee which is greater than the percentage of recovery stated in Subsections 033.01.e.i., 033.01.e.ii., or 033.01.e.iii. shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a charging lien and reasonableness of his or her fee. ()

04. Disclosure. Upon retention, the attorney shall provide to claimant a copy of a disclosure statement. No fee may be taken from a claimant by an attorney on a contingency fee basis unless the claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the fee agreement, so long as it contains the text of the numbered paragraphs one (1) and two (2) of the disclosure. A copy of the agreement must be given to the client. The disclosure statement shall be in a format substantially similar to the following:

**State of Idaho
Industrial Commission**

Client's name printed or typed _____

Attorney's name and address printed or typed _____

DISCLOSURE STATEMENT

- 1. In workers' compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you.

2. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Commission to resolve the dispute.

I certify that I have read and understand this disclosure statement.

Client's Signature Date _____

Attorney's Signature Date _____

()

034. -- 060. (RESERVED).

061. RULE GOVERNING NOTICE TO CLAIMANTS OF STATUS CHANGE PURSUANT TO SECTION 72-806, IDAHO CODE.

01. Notice of Change of Status. As required and defined by Idaho Code, Section 72-806, a worker shall receive written notice within fifteen (15) days of any change of status or condition. ()

02. By Whom Given. Any notice to a worker required by Idaho Code, Section 72-806 shall be given by: the surety if the employer has secured Workers' Compensation Insurance; or the employer if the employer is self-insured; or the employer if the employer carries no Workers' Compensation Insurance. ()

03. Form of Notice. Any notice to a worker required by Idaho Code, Section 72-806 shall be mailed within ten (10) days by regular United States Mail to the last known address of the worker, as shown in the records of the party required to give notice as set forth above. The Notice shall be given on IC Form 8, as prescribed by the Commission for this purpose, as substantially set forth below:

IC Form 8:		
NOTICE OF CLAIM STATUS		
Injured Worker	SSN	
Date of Injury		
Employer		
Insurance Company		
Address	State	Zip
This is to notify you of the denial or change of status of your workers' compensation claim as indicated in the statement checked below.		
Your claim is denied.		
Reason		
Your benefit payments will be	Reduced	Increased
Effective date		
Reason		
Your benefit payments will be stopped.	Effective date	
Reason		

IC Form 8:

NOTICE OF CLAIM STATUS

Your claim is being investigated.

A decision should be made by

Other

Effective date

Explanation

See attached medical reports

Signature of insurance company adjuster/examiner

Date

Name (typed or printed)

A sample copy of IC Form 8 is available from the;
Industrial Commission
700 S. Clearwater Lane
P. O. Box 83720,
Boise, Idaho 83720-0041
Telephone (208) 334-6000.

()

04. Medical Reports. As required by Idaho Code, Section 72-806, if the change is based on a medical report, the party giving notice shall attach a copy of the report to the notice. ()

05. Copies of Notice. The party giving notice pursuant to Idaho Code, Section 72-806 shall send a copy of any such notice to the Industrial Commission, the employer, and the worker's attorney, if the worker is represented, at the same time notice is sent to the worker. ()

062. -- 999. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.09 - MEDICAL FEES

DOCKET NO. 17-0209-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

October 7, 2010 4:00 p.m. – 6:00 p. m.	OCTOBER 12, 2010 4:00 - 6:00 p. m	OCTOBER 19, 2010 2:00 - 5:00 p. m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: The new Chapter 9, Medical Fees, adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. This new Chapter 9 also provides a new workers' compensation fee schedule for hospitals and ambulatory surgery centers. Since these adjustments may occur annually, they were split from the current Chapter 8, Miscellaneous Provisions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

No documents have been incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720
Boise, Idaho 83720-0041 / Phone: (208) 334-6000 / Fax: (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0209-1001

IDAPA 17
TITLE 02
CHAPTER 09

17.02.09 - MEDICAL FEES

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provision of Sections 72-508, and 72-803, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.09, "Medical Fees." ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 700 S. Clearwater Lane, Boise, ID 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 029. (RESERVED).

030. DEFINITIONS.

Words and terms used in this rule are defined in the subsections which follow. ()

01. Charge. Expense or cost. For hospitals and ASCs, "charge" shall mean the total charge. ()

a. "Acceptable charge." The charge for medical services calculated in accordance with this rule or as billed by the provider, whichever is lower, or the charge agreed to pursuant to a written contract. ()

b. "Customary charge." A charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ()

c. "Reasonable charge." A charge that does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined in this rule. ()

d. "Usual charge." The most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. ()

02. Ambulatory Payment Classification (APC). A payment system adopted by the Center for Medicare and Medicaid Services (CMS) for outpatient services. ()

03. Ambulatory Surgery Center (ASC). A facility providing medical services on an outpatient basis only. ()

04. Critical Access Hospital. A hospital which meets all of the current designation criteria of the Centers for Medicare and Medicaid Services (CMS) for a critical access hospital, including, but not limited to, the maximum number of beds and minimum distance from other hospitals. ()

05. Hospital. An acute care facility providing medical services on an inpatient and outpatient basis. ()

06. Implantable Hardware. Objects or devices that are made to support, replace or act as a missing anatomical structure or to support or manage proper biological functions or disease processes and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. ()

07. Medical Service. Medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply, as set forth in Section 72-102, Idaho Code. ()

08. Medicare Severity - Diagnosis Related Group (MS-DRG). A system adopted by the Centers for Medicare and Medicaid Services (CMS) that groups hospital admissions based on diagnosis codes, surgical procedures and patient demographics. ()

09. Payor. The legal entity responsible for paying medical benefits under Idaho's Workers' Compensation Law. ()

10. Physician. A member of any healing profession licensed or authorized to provide medical services by the statutes of this state, as set forth in Section 72-102, Idaho Code. ()

11. Provider. Any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which is compensable under the Idaho's Workers' Compensation Law, as set forth in Section 72-102, Idaho Code. ()

12. Rehabilitation Hospital. A facility operated for the primary purpose of assisting with the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. ()

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY PHYSICIANS UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided by physicians under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by physicians. ()

02. Adoption of Standard for Physicians. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by physicians. ()

03. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as

amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Anesthesia	00000 - 09999	Anesthesia	\$60.05
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	\$140.00
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	\$113.52
Surgery - Group Four	10000 - 12999 20000 - 20615 29000 - 29799 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Integumentary System Musculoskeletal System Casts & Strapping Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	\$87.72
Radiology	70000 - 79999	Radiology	\$87.72
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	\$47.00
Medicine - Group Two	90800 - 92999 93000 - 93999 95000 - 96020 96040 - 96999 99000 - 99607	Psychiatry & Medicine Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures Assessments & Special Procedures E / M & Miscellaneous Services	\$68.50

()

04. Anesthesiology. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by

the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. ()

05. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions, using the methodology set forth in Section 56-136, Idaho Code; pursuant to Section 72-803, Idaho Code. ()

06. Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.03, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Section 034, below. ()

07. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: ()

- a.** Modifier 50: Additional fifty percent (50%) for bilateral procedure. ()
- b.** Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. ()
- c.** Modifier 80: Twenty-five percent (25%) of coded procedure. ()
- d.** Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. ()

032. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY HOSPITALS AND AMBULATORY SURGERY CENTERS UNDER THE IDAHO WORKERS' COMPENSATION LAW. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by hospitals and ambulatory surgery centers under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by hospitals and ambulatory surgery centers. ()

02. Adoption of Standards for Hospitals and ASCs. The following standards shall be used to determine the acceptable charge for hospitals and ambulatory surgery centers. ()

a. Critical Access and Rehabilitation Hospitals. The standard for determining the acceptable charge for inpatient and outpatient services provided by a critical access or rehabilitation hospital is ninety percent (90%) of the reasonable charge. Implantable hardware charges shall be reimbursed at the rate of the actual cost plus fifty percent (50%). ()

b. Hospital Inpatient Services. The standard for determining the acceptable charge for inpatient services provided by hospitals, other than critical access and rehabilitation hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate for inpatient services is ten thousand dollars (\$10,000). Inpatient services that do not have a relative weight shall be paid at eighty-five percent (85%) of the reasonable charge; however, implantable hardware charges billed for services without an MS-DRG weight shall be reimbursed at the rate of actual cost plus fifty percent (50%). ()

c. Hospital Outpatient and Ambulatory Surgical Center (ASC) Services. The standard for determining

the acceptable charge for outpatient services provided by hospitals (other than critical access and rehabilitation hospitals) and for services provided by ambulatory surgical centers is calculated by multiplying the base rate by the current APC weight. The base rate for hospital outpatient services is one hundred and thirty dollars (\$130). The base rate for ASC services is eighty-five dollars (\$85). ()

i. If there is no weight listed for APC status codes A, B, C, D, E, F, G, H, K, L, M, Q, S, T, V, X, or Y, then reimbursement shall be seventy-five percent (75%) of the reasonable charge. ()

ii. Status code N items (other than implantable hardware) or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment. ()

iii. Two or more medical procedures with a status code T on the same claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status code T items paid at fifty percent (50%). ()

iv. Status code Q items will not be discounted. ()

d. Hospitals Outside of Idaho. Reimbursement for services provided by hospitals outside the state of Idaho may be based upon the agreement of the parties. If there is no agreement, services shall be paid in accordance with the workers' compensation fee schedule in effect in the state in which services are rendered. If there is no fee schedule in effect in such state, or if the fee schedule in that state does not allow reimbursement for the services rendered, reimbursement shall be paid in accordance with these rules. ()

e. Additional Hospital Payments. When the charge for a medical service provided by a hospital (other than a critical access or rehabilitation hospital) meets the following standards, additional payment shall be made for that service, as indicated. ()

i. Inpatient Threshold Exceeded. When the charge for a hospital inpatient MS-DRG coded service exceeds the sum of thirty thousand dollars (\$30,000) plus the payment calculated under the provisions of Subparagraph 032.02.b. of this rule, then the total payment for that service shall be the sum of the MS-DRG payment and the amount charged above that threshold multiplied by seventy-five percent (75%). Implantable charges shall be excluded from the calculation for an additional inpatient payment under this Subparagraph. ()

ii. Inpatient Implantable Hardware. Hospitals may seek additional reimbursement beyond the MS-DRG payment for invoiced implantable hardware where the total invoice cost is greater than ten thousand dollars (\$10,000). Additional reimbursement shall be the invoice cost plus ten percent (10%). Handling and freight charges shall be included in invoice cost. ()

iii. Outpatient Implantable Hardware. Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced implantable hardware where the total invoice cost is greater than five hundred dollars (\$500). Additional reimbursement shall be the invoice cost plus ten percent (10%). Handling and freight charges shall be included in invoice cost. ()

03. Disputes. The Commission shall determine the acceptable charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Section 034 of this rule. ()

04. Adjustment of Hospital and ASC Base Rates. The Commission may periodically adjust the base rates set out in Subparagraphs 032.02.b. and 032.02.c. of this rule to reflect changes in inflation or market conditions. ()

033. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY OTHER PROVIDERS UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by providers other than physicians, hospitals or ASCs under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by providers other than physicians, hospitals or ASCs. ()

02. Adoption of Standard. The standard for determining the acceptable charge for providers other than physicians, hospitals or ambulatory surgery centers (ASCs) shall be the reasonable charge. ()

03. Disputes. The Commission shall determine the acceptable charge for medical services provided by providers other than physicians, hospitals and ASCs that are disputed based on all relevant evidence in accordance with the procedures set out in Section 034 of this rule. ()

034. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.

01. Authority. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule governing billing and payment requirements for medical services provided under the Workers' Compensation Law and the procedures for resolving disputes between payors and providers over those bills or payments. ()

02. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. ()

03. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with this Subsection 034.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 034.10 for that service. ()

a. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, for the year in which the service was performed and using current International Classification of Diseases (ICD) diagnostic coding, as well. ()

b. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. ()

c. If requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Benefits." Subsection 322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 034.04 and 034.06, below, shall not begin to run until the Payor receives the Report. ()

04. Prompt Payment. Unless the Payor denies liability for the claim or, pursuant to Subsection 034.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to any charge, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. ()

05. Partial Payment. If the Payor acknowledges liability for the claim and, pursuant to Subsection 034.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. ()

06. Preliminary Objections and Requests for Clarification. ()

a. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. ()

b. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. ()

c. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. ()

d. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 034.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. ()

07. Provider Reply to Preliminary Objection or Request for Clarification. ()

a. Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection or Request for Clarification. ()

b. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. ()

c. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. ()

08. Payor Shall Pay or Issue Final Objection. The Payor shall pay the Provider's bill in whole or in part or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. ()

09. Failure of Payor to Finally Object. Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. ()

10. Dispute Resolution Process. If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors, as referenced in Sections 031, 032 and 033 of this rule. If Provider's motion disputing CPT or MS-DRG coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. For motions filed by a Provider disputing items without CPT or MS-DRG codes, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order. ()

035. -- 999. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

DOCKET NO. 17-0210-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed and two new chapters are being adopted to clarify each entity's rules. This new chapter, IDAPA 17.02.10 (Insurance Carriers), adopts rules governing insurance carriers which clarify terms and implement more comprehensive reporting requirements.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 10th day of September, 2010.

Mindy Montgomery
Director
Industrial Commission
700 S. Clearwater Lane, Boise, ID 83712
P.O. Box 83720
Boise, ID 83720-0041
Phone: 208-334-6000
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0210-1001

IDAPA 17
TITLE 02
CHAPTER 10

17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provisions of Sections 72-508, 72-301 and 72-304, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers." These rules shall apply to all insurance companies securing compensation under the Workers' Compensation Law. ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: ()

01. Indemnity Benefits. All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. ()

02. Indemnity Claim. Any claim made for the payment of indemnity benefits. ()

011. RULE GOVERNING QUALIFICATION OF INSURANCE CARRIER TO UNDERWRITE WORKERS' COMPENSATION LIABILITY.

01. Deposit With State Treasurer. To receive the approval of the Industrial Commission to write Worker's Compensation coverage under Section 72-301, Idaho Code, a carrier whose application has been approved by the Director of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, shall initially deposit security in the amount of two hundred fifty thousand dollars (\$250,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code. ()

02. Application. Before the Commission shall approve any insurance carrier to do business under the Workers' Compensation Law, said carrier shall apply to the Industrial Commission for permission to write compensation insurance and said application shall include the following: ()

a. A statement from the Director of the Idaho Department of insurance that the insurance carrier has been granted authority under the insurance laws of the state of Idaho to write casualty or surety insurance; ()

- b. The latest audited financial statement of said carrier; ()
- c. The name and address of the agent for service of process in Idaho; ()
- d. The name and address of the Idaho resident licensed adjuster or adjusters with authority to make compensation payments and adjustments of claims arising under the Act. If more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided; ()
- e. A statement that the carrier will provide such blank forms as are, or may be, prescribed by the Commission and distributed to such employers as it may insure. ()
- f. A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer in compliance with the law for all employers insured. All carriers will use the continuous bond form set out herein. ()

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the State of Idaho and the beneficiaries of awards rendered under the Workers' Compensation Law of the State of Idaho, for all sums said Principal is liable for by reason of workers' compensation policies issued to employers in the State of Idaho, insuring such employers' liability under Title 72, Idaho Code, the Workers' Compensation Law. Under the authority of Chapter 3, Title 72, Idaho Code, the liability of the Surety on this bond shall in no event exceed an amount equal to the total amount of all outstanding and unpaid compensation awards against the Principal.

In case of any default by the Principal or in the event said Principal shall fail to pay, by reason of insolvency, or because a receiver has been appointed therefor, or by reason of refusal, neglect or delay to pay any final award or awards, the State of Idaho and any beneficiaries under the Workers' Compensation Law shall have a right of action at law against said Surety immediately upon default by said Principal.

This bond is issued for an indefinite term to begin on the _____ day of _____, 20____, and will continue in full force and effect until terminated in either of the following two (2) manners: This bond may be cancelled by the Surety by filing sixty (60) days' written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and this instrument to be sealed by the respective parties thereto this _____ day of _____, 20____. ()

- g. A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, if said bonds are to be renewed. ()
- h. A statement that the cancellation of surety contracts will be made as set forth in the law, if said contracts are cancelled; ()
- i. A statement that said carrier will deposit, in addition to the security required for authorization to write Workers' Compensation coverage by these rules, such further security equal to all unpaid outstanding awards of compensation; ()
- j. A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission to the end that payments of compensation shall be sure and certain and not unnecessarily delayed; and ()
- k. A statement that said carrier will make such reports to the Commission as it may require in

reference to matters under the Workers' Compensation Law, including IC Form 36A, Report of Outstanding Awards – Insurance Carriers; which must be filed quarterly with the Commission. ()

012. RULES GOVERNING INSURANCE CARRIERS.

An insurance carrier must apply for and receive the approval of the Industrial Commission to write workers' compensation insurance pursuant to Section 72-301, Idaho Code. After receiving such approval, an insurance carrier shall comply with the following: ()

01. Maintain Statutory Security Deposits with the State Treasurer. ()

a. Each insurance carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequent to that date. ()

b. In addition to the security required in Subsection 012.01.a., of this rule, each insurance carrier shall deposit an amount equal to the total unpaid outstanding awards of said insurance carrier. Such deposit shall be in the form permitted by Section 72-301, Idaho Code. Surety bonds shall be in the form set forth in Subsection 011.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. A partial release of security deposited hereunder must be requested in writing and approved by the Commission. ()

c. Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book-entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. ()

02. Appoint Agent for Service of Process. Each insurance carrier shall appoint the Director of the Department of Insurance as its agent to receive service of legal process. ()

03. Maintain Resident Idaho Office. Each insurance carrier shall maintain an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act. ()

a. Each authorized insurance carrier shall notify the Commission Secretary in writing of any change of the designated resident adjuster(s) for every insured Idaho employer within fifteen (15) days of such change. ()

b. Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. ()

04. Supply Forms. Each insurance carrier shall supply such forms as are or may be prescribed by the Commission pursuant to the Workers' Compensation Law and distribute them to all employers it insures. A list of required forms is available from the public information section of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, telephone (208)334-6000. ()

05. Comply with Industrial Commission Reporting Requirements. Each insurance carrier shall file such reports as the Industrial Commission may require concerning matters under the Workers' Compensation Law. ()

06. Report Proof of Coverage.

a. Each insurance carrier shall report proof of coverage information to a third party designated by the Industrial Commission as its agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The name and address of the Commission's designated agent(s) is available upon request from the Employer Compliance Bureau of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

b. As an alternative to Subsection 012.06.a., an insurance carrier may be allowed to report proof of coverage information directly to the Industrial Commission in an electronic format prescribed by the Commission by first making a written request to the Commission and obtaining the Commission's permission. A formal written agreement with the Commission is required prior to the electronic transmission of proof of coverage data to the Commission. ()

c. The Industrial Commission hereby adopts the International Association of Industrial Accident Boards and Commissions' (IAIABC) electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout and transaction standards is available upon request from the Employer Compliance Bureau, Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

d. The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance carrier providing coverage. ()

07. Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days. Each insurance carrier shall report the issuance of any new workers' compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. ()

08. Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute. Each insurance carrier shall report the cancellation and/or nonrenewal of any workers' compensation insurance policy to the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. Receipt of cancellation or nonrenewal notices by the Commission's designated agent shall be deemed to have been received by the Commission. ()

09. Report Election of Coverage on Form IC52 or Similar Format. Each insurance carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," which follows this chapter as Appendix A. This report shall be submitted to the Industrial Commission in writing on eight and one-half by eleven inch (8 1/2" x 11") paper. ()

10. Report Outstanding Awards. Each insurance carrier shall report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, any outstanding award. ()

a. The report of outstanding awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. ()

b. The report shall be filed even if there are no outstanding awards. In that event, the carrier shall certify the fact that there are no outstanding awards to be reported. ()

c. The report shall be submitted on or in a format that is substantially the same as Form IC36A, "Report of Outstanding Awards – Insurance Carriers" which follows this chapter as Appendix B. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 1/2" x 11") in size. ()

d. The report shall be signed and certified to be correct by a corporate officer. If an insurance carrier has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify and file a consolidated report of outstanding awards. ()

e. The report shall list all outstanding awards, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. ()

11. Comply with Law and Rules. Each insurance carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed. ()

013. -- 050. (RESERVED).

051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: ()

01. Idaho Office. ()

a. All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. ()

b. The insurance carrier shall authorize a member of its staff or a resident licensed claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: ()

i. Investigate and adjust all claims for compensation; ()

ii. Pay all compensation benefits due; ()

iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; ()

iv. Enter into compensation agreements and lump sum settlements with Claimants; and ()

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. ()

c. As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. ()

02. Claim Files. All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: ()

a. First Report of Injury and Claim for Benefits; ()

b. Copies of bills for medical care; ()

c. Copy of lost-time computations, if applicable; ()

d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; ()

e. Employer's Supplemental Report; and ()

f. Medical reports. ()

03. Correspondence. All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed from and maintained at in-state offices. ()

04. Date Stamp. Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped

with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. ()

05. Notice and Claim. All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or insurance carrier. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. ()

06. Compensation. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. ()

07. Checks and Drafts. Checks must be signed and issued within the state of Idaho; drafts are prohibited. ()

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. ()

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. ()

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. ()

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. ()

08. Copies of Checks. Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. ()

09. Prompt Claim Servicing. Prompt claim servicing includes, but is not limited to: ()

a. Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. ()

b. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. ()

10. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. ()

11. Non-Compliance. Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. ()

052. -- 270. (RESERVED).

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, the state insurance fund and every insurance carrier authorized to transact workers' compensation insurance in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. ()

01. Filing. The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. ()

02. Form. The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," contained in Appendix C at the end of this chapter. ()

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. ()

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 each year. ()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. ()

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. ()

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. ()

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). ()

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. ()

272. -- 999. (RESERVED).

APPENDIX A

IC52 ELECTION OF COVERAGE

Check the appropriate box	
<input type="checkbox"/> Election	<input type="checkbox"/> Revocation of Election

The undersigned hereby notifies the Industrial Commission of the following:

- Household domestic service
- Casual employment
- Employment of outworkers
- Employment of members of an employer's family dwelling in his household. (Applies only to sole-proprietorships)
- Employment as the owner of a sole proprietorship
- Employment of a working member of a partnership or a limited liability company (Circle either partnership or Limited Liability Company; if the election applies only to certain partners/members, name the covered partners/members.)
- Employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof (If the election applies only to certain corporate officers, name the covered officers)
- Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States
- Pilots of agricultural spraying or dusting planes
- Associate real estate brokers and real estate salesmen paid solely by commission
- Volunteer ski patrollers
- Officials of athletic contests involving secondary schools

(Name of Insurance Company)

Policy Number _____

Insured Name _____

Effective Date of Election/Revocation _____

(Signature of authorized representative)

(Employer's signature)

APPENDIX B

IC36A -- REPORT OF OUTSTANDING AWARDS -- INSURANCE CARRIERS

(Name of Carrier) _____							
Calendar Year: _____							
For Calendar Quarter Ending: qMarch qJune qSeptember qDecember							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Date of Injury	Claimant Name (as shown on First Report of Injury)	Type of Claim	Total Awards	Compensation Paid This Report Period	Total Compensation Paid to Date	Adjustments	Unpaid Balance [(4) minus (5)]
TOTALS							

Send Original to: Fiscal Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041

I, the undersigned corporate officer of the above named insurance carrier, do hereby certify that this report is complete and accurate to the best of my knowledge.

Corporate Officer's Signature: _____

Title: _____

Printed Name: _____

Date: _____

Name and Title of Preparer: _____

Company: _____

Address: _____

Telephone: _____ E-Mail Address: _____

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IDAPA 17 - INDUSTRIAL COMMISSION

17.02.11 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW - SECURITY FOR COMPENSATION - SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1001 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed and two new chapters are being adopted to clarify each entity's rules. This new chapter, IDAPA 17.02.11 (Self-Insured Employers), adopts rules governing self-insured employers that clarify terms, provide a more detailed application process and outline continuing reporting and security deposit requirements necessary to maintain self insured status.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fiscal impact to the industrial administration fund under this proposal is nominal due to the implementation of a \$250 application fee for self-insured employers. Self-insured applications average only 2-3 per year. The Commission's authority is contained in Section 72-508, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 1st day of September, 2010.

Mindy Montgomery
Director
Industrial Commission
700 S. Clearwater Lane, Boise, ID 83712
PO Box 83720, Boise, ID 83720-0041
Phone: 208-334-6000 / Fax: 208-334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1001

IDAPA 17
TITLE 02
CHAPTER 11

17.02.11 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provisions of Sections 72-508, 72-301 and 72-304, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.11, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers." These rules shall apply to all employers securing compensation under the Workers' Compensation Law. ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. -- 011. (RESERVED).

012. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: ()

01. Indemnity Benefits. All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. ()

02. Indemnity Claim. Any claim made for the payment of indemnity benefits. ()

03. Payroll. The gross amount paid by an employer for salaries, wages or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. ()

013. RULES GOVERNING QUALIFICATIONS OF SELF-INSURED EMPLOYERS.

In order to be considered for approval by the Industrial Commission to self-insure under Section 72-301, Idaho Code, an employer shall comply with the following requirements: ()

01. Payroll. Have an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000); ()

02. Application. Submit a completed application, available from the Industrial Commission's Fiscal Section, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Section, at 700 S. Clearwater Lane, PO Box 83720-0041, Boise, Idaho 83720-0041; telephone (208)

334-6000. ()

03. Documentation. Submit documentation satisfactory to the Commission demonstrating the sound financial condition of the employer, such as the most recent CPA reviewed or, if available, audited, financial statement; ()

04. Adjuster. Designate in writing a licensed Idaho resident adjuster; ()

05. Previous Claims. Provide a history of workers' compensation claims filed with the employer or the employer's workers' compensation carrier during the previous three (3) calendar years. ()

06. Custodial Agreement. Set up a custodial agreement with the State Treasurer for securities required to be deposited under Sections 72-301 and 72-302, Idaho Code; ()

07. Supplemental Information. Provide supplemental information as requested; ()

08. Initial Security Deposit. Prior to final approval, deposit an initial security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form set forth in Subsection 014.02, of this rule, in the amount of one hundred and fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000.00) of the employer's average annual payroll in the state of Idaho for the three (3) preceding years; along with such additional security as may be required by the Commission based on prior claims history; ()

09. Written Approval. Obtain written approval from the Industrial Commission. ()

014. CONTINUING REQUIREMENTS FOR SELF-INSURED EMPLOYERS.

Upon receiving the approval of the Industrial Commission to be a self-insured employer under Section 72-301, Idaho Code, to continue such approval a self-insured employer shall comply with the following requirements: ()

01. Payroll Requirements. Maintain an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000), if such employer was originally approved by the Commission subsequent to April 30, 1984, and two million dollars (\$2,000,000) if such employer was originally approved by the Commission prior to May 1, 1984; provided, however, that any employer who was an approved self-insured employer on July 1, 1974 need not comply with the provisions of this section. Any self-insured employer that does not meet the payroll requirements of this rule for two consecutive semi-annual premium tax reporting periods shall be allowed to maintain their self-insured status for six (6) months from the end of the last reporting period in order to permit them time to increase their payroll or obtain workers' compensation coverage with an insurance carrier authorized to write workers' compensation insurance in the state of Idaho. ()

02. Security Deposit with Treasurer. ()

a. Maintain a security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form set forth below, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the employers' average annual payroll in the state of Idaho for the three (3) preceding years, not in excess of ten million dollars (\$10,000,000) if such employer was originally approved by the Commission subsequent to April 30, 1984; and five million dollars (\$5,000,000) if such employer was originally approved by the Commission prior to May 1, 1984. In addition thereto, the self-insured employer shall deposit additional security in an amount equal to all outstanding and unpaid awards of compensation under the Workers' Compensation Law. ()

b. All security deposited by the self-insured employer shall be maintained as provided by Section 72-302, Idaho Code. ()

c. Any withdrawal or partial release of security deposited hereunder must be requested in writing and approved by the Commission. ()

SELF-INSURER'S COMPENSATION BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____, a corporation of the State of _____, hereinafter called the Principal, as Principal, and the _____, a surety corporation authorized to transact a surety business in the State of Idaho, as Surety, are held and firmly bound unto the State of Idaho, for the use and benefit of all those employees of the Principal to whom or to the dependents of whom the Principal may, during the life of this bond, become liable for benefits under the Idaho Workers' Compensation Law, as hereinafter more fully referred to, in the sum equal to and limited by the sum or sums that may become due and/or payable by said Principal to said employees under the terms, provisions and limitations of said Workers' Compensation Law, and in accordance with the terms, agreements, conditions and limitations of this obligation not exceeding, however, the sum of _____ dollars, for the payment of which, well and truly made, the Principal well and truly binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, well and truly by these presents.

WHEREAS, in accordance with the provisions of Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, and Principal has elected to secure compensation to its employees by depositing and maintaining with the Industrial Commission of Idaho a surety bond issued and executed by the surety herein named, which surety is duly qualified to transact such business in the state of Idaho subject to the approval of the Industrial Commission of the State of Idaho.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay compensation according to the terms, provisions, and limitations of Idaho Code, Title 72, Chapter 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, to its injured employees or the dependents of its killed employees contemplated by the terms of and covered under the said law, and shall furnish medical, surgical, nursing and the hospital services and attention and funeral expenses as provided for in said law (all of which shall be understood to be included in the term "compensation" as hereinafter used), then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however to the following express conditions and agreements:

1. That any employee or the dependent of any employee of the Principal entitled to compensation under said Workers' Compensation Law, shall have the right to enforce in his own name the liability of the Surety hereunder, in whole or in part, for such compensation, either by at any time filing a separate claim against the Surety or by at any time making the Surety a part of the original claim against the employer; provided, however, that payment in whole or in part of such compensation by either the Principal or the Surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

That as between the employee and the Surety, notice to or knowledge of the occurrence of injury on the part of the employer shall be deemed notice to or knowledge, as the case may be, on the part of the Surety; that the obligation of the Surety, and the Surety, shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the Principal for the payment of compensation under the provisions of the Workers' Compensation Law aforesaid, and that the insolvency or bankruptcy of the Principal and its discharge therein, shall not relieve the Surety from the payment of compensation for injuries, including death resulting therefrom, sustained during the life of this bond by an employee of the Principal covered under the Workers' Compensation Law.

That upon request of the Industrial Commission of Idaho, it will make such changes in this form of bond by endorsement to be attached hereto or by the execution of a surety bond replacing this one, as the said Commission may deem requisite, to bring this bond into conformity with its rulings as to the form of surety bond required of employers under Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto.

This bond is issued for an indefinite term to begin on the _____ day of _____, 20____, and will continue in full force and effect until terminated in either of the following two manners: This bond may be cancelled by the Surety by filing sixty (60) days written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN TESTIMONY WHEREOF, the said Principal and said Surety have caused these presents to be executed in due form this _____ day of _____, 20____.

Countersigned

By

Resident Agent

Principal

SEAL

SEAL

By

By

Samples of this form are available from the Fiscal Section of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, Telephone (208) 334-6000. ()

03. Maintain a Licensed Resident Adjuster. Maintain a resident licensed claims adjuster located within the state of Idaho who shall have full authority to service said claims on behalf of the employer including, but not limited to, the following: ()

a. Investigate and adjust all claims for compensation; ()

b. Pay all compensation benefits due; ()

c. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; ()

d. Enter into compensation agreements and lump sum settlements with Claimants; ()

e. Provide at the employer's expense necessary forms to any employee who wishes to file a claim under the Workers' Compensation Law. ()

04. File Reports. Report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, all outstanding and unpaid awards of compensation. ()

a. The report of outstanding and unpaid awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. ()

b. The report shall be filed even if there are no outstanding awards. In that event, the employer shall certify the fact that there are no outstanding awards to be reported. ()

c. The report shall be submitted on or in a format that is substantially the same as Form IC36B, "Report of Outstanding Awards - Self-Insured Employers," which follows this chapter as Appendix A. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 1/2" x 11") in size. ()

d. The report shall be signed and certified to be correct by a corporate officer. If an employer has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the employer shall prepare, certify and file a consolidated report of all outstanding and unpaid compensation awards. ()

e. The report shall list all outstanding awards at the beginning and end of the reporting period, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs first, along with the amount of any compensation paid on each claim during the reporting period. ()

f. A self-insured employer shall also make such other reports to the Commission as it may require in reference to matters under the Workers' Compensation Law. ()

05. Submit to Audits by Industrial Commission. Each year a self-insured employer shall provide the Industrial Commission with a copy of its annual financial statements, or other acceptable documentation. Each self-insured employer shall submit to audit by the Commission or its designee at any time and as often as it requires to verify the amount of premium such self-insured employer would be required to pay as premium to the State Insurance Fund, and to verify compliance with the provisions of these rules and the Idaho Workers' Compensation Law. ()

06. Comply with Law and Rules. Comply with the statutes of the state of Idaho and the rules of the Industrial Commission to the end that payment of compensation shall be sure and certain and not unnecessarily delayed. The Commission may withdraw its approval of any employer to operate as a self-insurer if it shall appear to the Commission that workers secured by said self-insured employer are not adequately protected and served, or the employer is failing to comply with the provisions of these rules or the Workers' Compensation Law. ()

015. -- 050. (RESERVED).

051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: ()

01. Idaho Office. All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The self-insured employer shall designate a licensed adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. ()

02. Claim Files. All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: ()

a. First Report of Injury and Claim for Benefits; ()

b. Copies of bills for medical care; ()

c. Copy of lost-time computations, if applicable; ()

d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; ()

e. Employer's Supplemental Report; and ()

f. Medical reports. ()

03. Correspondence. All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed from and maintained at in-state offices. ()

04. Date Stamp. Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the self-insured employer. ()

05. Notice and Claim. All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or self-insured employer. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. ()

06. Compensation. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. ()

07. Checks and Drafts. Checks must be signed and issued within the state of Idaho; drafts are prohibited. ()

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a self-insured employer to sign and issue checks outside the state of Idaho. ()

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payment of compensation. ()

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. ()

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. ()

08. Copies of Checks. Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. ()

09. Prompt Claim Servicing. Prompt claim servicing includes, but is not limited to: ()

a. Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. ()

b. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. ()

10. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. ()

11. Non-Compliance. Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. ()

052. -- 180. (RESERVED).

181. RULE PROHIBITING USE OF SICK LEAVE OR OTHER ALTERNATIVE COMPENSATION.

01. Employee Not Required to Take Sick Leave in Lieu of Compensation. No employer obligated to pay workers' compensation benefits to an employee as provided by the Workers' Compensation Law may require an employee to accept "sick leave" or other comparable benefit in lieu of the workers' compensation benefits provided by law. Section 72-318(2), Idaho Code, specifically provides that no agreement by an employee to waive his rights to compensation under the Workers' Compensation Law shall be valid. ()

02. Election of Sick Leave or Alternative Compensation Prohibited. Further, the Commission construes Section 181 as preventing an employee from electing to accept "sick leave" or other comparable benefit from an employer in lieu of workers' compensation benefits to which the employee is entitled under the Workers' Compensation Law, and therefore such elections or agreements are prohibited. ()

182. -- 270. (RESERVED).

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, every authorized self-insurer authorized to self-insure its workers' compensation obligations in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. ()

01. Filing. The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report; which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. ()

02. Form. The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," contained in Appendix B at the end of this chapter. ()

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. ()

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 each year. ()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. ()

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. ()

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. ()

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). ()

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. ()

272. -- 999. (RESERVED).

APPENDIX A

IC36B -- REPORT OF OUTSTANDING AWARDS -- SELF-INSURED EMPLOYERS

(Name of Self-Insured Employer) _____							
Calendar Year: _____							
For Calendar Quarter Ending: qMarch qJune qSeptember qDecember							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Date of Injury	Claimant Name (as shown on First Report of Injury)	Type of Claim	Total Awards	Compensation Paid This Report Period	Total Compensation Paid to Date	Adjustments	Unpaid Balance [(4) minus (5)]
TOTALS							

Send Original to: Fiscal Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041

I, the undersigned corporate officer of the above named self-insured employer, do hereby certify that this report is complete and accurate to the best of my knowledge.

Corporate Officer's Signature: _____

Title: _____

Printed Name: _____

Date: _____

Name and Title of Preparer: _____

Company: _____

Address: _____

Telephone: _____ **E-Mail Address:** _____

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