

RULEMAKING ADVISORY COMMITTEE MEETING

Aug 23, 2017, 8:30 a.m.

Room F, 350 Winter Street NE, Salem, Oregon

WORKERS' COMPENSATION DIVISION RULES

OAR 436-050, Employer/Insurer Coverage Responsibility

Committee members:

Hasina Wittenberg	S D A O
Bob Brandkamp	AVISTA
Jaye Fraser	SAIF Corporation
Chris Hill	S D A O
Frank Stratton	S D A O
Jennifer Flood	Ombudsman for Injured Workers

Agency staff attending:

Adam Breitenstein
Angie Sousa
Barbara Hall
Cara Filsinger
Chris Clark
Fred Bruyns
Jody Howatt
Lou Savage

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BEFORE THE WORKERS' COMPENSATION BOARD OF

THE STATE OF OREGON

RULEMAKING ADVISORY COMMITTEE

WORKERS' COMPENSATION DIVISION RULES

OAR 436-050, EMPLOYER/INSURER COVERAGE RESPONSIBILITY

Workers'
Compensation Board
Hearings Division

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 23rd day of August, 2017, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

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DISCUSSION AMONG PARTIES

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TRANSCRIPT OF PROCEEDINGS

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3 0:00: So we're on the record. Welcome to all of you. My name is
4 Fred Bruyns. I'm a--coordinate the rulemaking process for the Workers'
5 Compensation Division. And the handouts for our meeting are at the back of the
6 room. We have an agenda, of course. But there's also a couple of House Bills,
7 2186 and 2336, that are pertinent this morning, and there are copies of those at the
8 back of the room as well.

9 We do have a full agenda. It looks like we have a pretty small group.
10 Probably, some additional folks will be joining us during the coming minutes or so.
11 But, regardless, we're here to listen to you. And because our agenda is so full,
12 however, we may not have much time for new issues. If there is time at the end,
13 we'll certainly open it up. But if you have additional thoughts after this meeting,
14 pretty much as always, we would welcome them either in writing, or you can just pick
15 up the phone and call me. We'd like to have that within about a week, because
16 we're looking to file these in September. So we wan--we would want to make sure
17 we had enough time to consider what you--what--the advice that you do provide, and
18 give it, you know, an honest and full consideration, so keep that in mind.

19 This is a very informal process. This is an advisory committee, not a
20 public hearing. So it's just a--our chance to get your input on the issues on the
21 agenda as we go along. Please keep in mind any fiscal impacts to what we have
22 proposed, or what we're actually putting on the table for discussion here, whether
23 those impacts are positive or negative to you or the folks that you represent,
24 Because when we file rules with the Secretary of State, we have to estimate those
25 impacts, and we rely on the information that you folks provide.

1 If you're on the telephone with us this morning, please keep in mind
2 that we'll pick up any--we'll hear any background noises in your office, so you may
3 want to use your discretion to mute your phone as needed. Please do not put us on
4 hold, however, because we will probably get your--we will certainly get your
5 background music, if you have that, or messages, and there's no way for us to turn
6 those off. So you can--you may leave and rejoin the conference as often as you like.

7 With that, I've introduced myself, so let's begin with anyone who's on
8 the telephone with us this morning. Could you introduce yourselves to the
9 committee? Is there anyone there on the phone with us? Apparently not, so I'm
10 going to turn to my left.

11 2:40: Yeah. I'm Chris Clark. I'm a policy analyst with the Division.
12 And I'll be facilitating part of this meeting and working on these rules, so...

13 2:49: Frank Stratton with Special Districts Insurance Services.

14 2:53: Hasina Wittenberg, Special Districts.

15 2:56: Cara Filsinger, Workers' Compensation Division.

16 2:58: Barbara Belcher, Workers' Compensation Division.

17 3:00: Angie Sousa, Workers' Compensation Division.

18 3:02: Adam Breitenstein, Workers' Compensation Division.

19 3:05: Jennifer Flood, Ombudsman for Injured Workers, DCBS.

20 3:09: Bob Brandkamp, AVISTA.

21 3:12: And joining us just now is?

22 3:14: Chris Hill, Special Districts--

23 3:15: Okay.

24 3:15: --Association of Oregon.

25 3:17: Jody Howatt,--

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3:18: Welcome.

3:18: --Workers' Compensation Division.

3:20: Okay. Again, thank you all for coming and joining us this morning. So with that, any questions before we launch into our agenda? Okay. Then I will turn things over to Chris Clark. Take it away, Chris.

3:40: Great. Well, thanks again to everybody who made it today. We're excited to tackle a few issues related to legislation, as well as a few technical fixes and other issues. I guess in the interest of time I'll go ahead and get started. I'm going to briefly read through the background of each issue, but I probably won't read the whole thing. So I'll try to indicate when I skip around, but be mindful that I might not read all the words on the page.

So starting with our first issue, which is about Public Employer Financial Analysis, Senate Bill 1558 in 2014 required self-insured employers to demonstrate acceptable financial viability based on information required by the director by rule. The Division established a set of financial ratios to assess the financial viability of self-insured employer groups through amendments to OAR Division 050 Rule 0260 in 2014, and added a similar set of three ratios for individual self-insured employers in January 1, 2017.

Under the rule, a self-insured employer's financial strength is determined using the current ratio, the debt-to-equity ratio, and the return-on-net assets ratio. These ratios are common measures of liquidity, financial leverage and profitability, respectively. Several stakeholders-- I'm going to skip down. Several stakeholders have commented that use of a narrow set of ratios may not accurately capture the financial condition of all self-insured employers, and the Division has been monitoring the initial application of the new rules for potential issues.

1 Based on early results, it appears that some private sec--public sector
2 employers, sorry, such as school districts, have scored zero on the return-on-net
3 assets ratios. However, because public employers typically are not designed or
4 sometimes permitted to generate profit from their asset base, a low score is not
5 necessarily a sign of poor financial viability. We have also identified potential issues
6 with the impact of the way public sector debt is structured, and recent changes to the
7 way PERS liability is reported on public employer financial statements as having an
8 adverse impact on public employers' debt-to-equity ratio.

9 So we're basically looking at a way to revise our financial analysis--
10 financial viability analysis for public sector employers. We do have a couple
11 alternatives, including establishing an alternative or supplemental set of ratios for
12 public employers and similar entities, or establishing an alternative scoring method
13 for these employers.

14 We were hoping some of the affected entities could join us today, but I
15 understand there was a conflict. So if anybody does have any input on how we
16 could broaden or adjust our financial analysis while kind of maintaining the integrity
17 of the system, we'd welcome any input anybody has.

18 6:47: So I'll just--I just have a comment. This is Bob Brandkamp from
19 AVISTA. I totally agree that you should have some type of alternative ways of
20 measuring that. We ran into that issue with our company just because of the way
21 the utility industry is structured. You know, we score very low on the ratio. But when
22 you look at our balance sheet, because of the way we structure debt to equity and
23 cash flow, you know, we have low results, but, you know, financially we're a very
24 strong company. So I think especially in the public sector, because of those
25 restrictions, it does make sense to come up with some alternative ratios.

1 7:31: Do you have any suggestions of areas we should be
2 emphasizing more or less, or how we should be looking at those types of entities
3 differently?

4 7:40: No, just because I'm not--

5 7:41: Sure.

6 7:41: --intimately familiar--

7 7:42: Oh, yeah.

8 7:42: --with it. So I wouldn't want to speak and speak out of turn, so...

9 7:46: That's...

10 7:46: I mean, I'd be more than happy to help look at it, but that's really
11 not my field of expertise.

12 7:50: Yeah. And I'm not trying to put you on the spot at all.

13 7:52: Yeah. We'll probably need to--we will reach out to those school
14 districts. And they just happen to have a meeting scheduled for the same time and
15 day. They're in Salem, but that's as close as they could get.

16 8:07: Okay. Are there any other comments or suggestions on that?

17 8:11: We'll probably have our CFO take a look at this. And if there's
18 anything productive we can add, we'll, you know...

19 8:17: Absolutely. That would be great. Okay. In that case, we will
20 continue to look into this. And we'll look for any written advice that anybody wants to
21 submit as well. All right.

22 Moving to the next issue. The self-insurance program has seen
23 endorsements to excess insurance policies giving the excess carrier the right to
24 transfer claims from one service company to another if notification pol--requirements
25 of the policy are not met. These provisions do not comply with the requirements for

1 notification of processing locations under OAR 436, Division 50, Rule 210, and
2 raises concerns about the self-insured employer being able to correctly identify and
3 report claims to the excess carrier on the report of losses during the claims reserve
4 audit. The rule should be revised to prohibit endorsements that do not comply with
5 OAR 436-050 Rule 210.

6 So we are looking at adding a clause to that rule to make it clear that
7 we're not going to allow those types of endorsements. Does anybody have any
8 thoughts or comments on that? Seeing none, we'll move on.

9 Under ORS 656.262(5), an employer may reimburse their insurer for
10 medical costs on nondisabling claims up to the maximum amount published in
11 Bulletin 345. Self-insured employers may do the same. They may take advantage
12 of that by excluding costs for medical services paid on nondisabling claims.

13 Under rule--Division 50, Rule 175(3), we require claim loss data to
14 include the total amount of excluded medical costs, and the number of claims for
15 which medical cost--the maximum medical cost reimbursement amount is claimed,
16 but we do not require it--the per claim exclusion to be reported to us. So--and that's
17 caused some problems for us to be required as to follow-up with self-insured
18 employers. It makes it difficult to verify the accuracy of the claim loss data at audit.

19 So we are proposing to add in addition to 175(3) to require excluded
20 medical costs to be reported by claim, instead of just the total costs. We are
21 interested if that's going to be overly burdensome to people, although we expect that
22 that data is already available and just not being consistently reported to us, because
23 a lot of self-insured employers already give it to us.

24 Okay. Do you-- Oh, sorry.

25 11:19: I just think it's kind of interesting, just to kind of back up and

1 look at it, being a self-insured employer, and you're claiming an amount that you're
2 paying to yourself to exclude from experience rating.

3 11:31: Yeah.

4 11:32: It almost seems like that should-- I mean, why would anybody
5 not do that? Why aren't we just automatic--why isn't their system set up to
6 automatically exclude that from the self-insured employer's report of losses?

7 11:43: That's a good question, Chris.

8 11:46: Okay. That just--you're paying yourself. You're paying the
9 claim anyway, because you're self-insured. Just by definition, you're already doing
10 it, so-- All right.

11 11:55: Yeah. And maybe some of the self-insured--the self-insurance
12 specialists could speak to whether we see that--is it consistently done, or are people
13 aware of...

14 12:03: I think the concern was that the bulletin itself doesn't--isn't--
15 doesn't coincide with what the rule says.

16 12:08: Okay. Yeah.

17 12:09: The bullet point required them to list it out. Am I correct? The
18 bullet point required them to list it out, but the rule doesn't say that. The rule just
19 says to provide the number. And I think in general we're getting them, but
20 sometimes we have to go back and say, you know, we need to--you to identify which
21 claims are--you know, they're--it's applied to, but the rule doesn't require it. And so I
22 think part of it was fear of being--it getting pushed back from some of the self-
23 insurers and stuff. But yeah, for the most part I think that they supply it, but they
24 don't speak together. The rules and bulletin don't speak to each other.

25 12:36: Thank you, Chris. Jody here. Part of the logic, I think, in that,

1 too, is dependent on how much hands-on that self-insured employer has with their
2 claims processing and their reported losses, because it appears to me that the
3 status is there. It's not just not being captured and reported.

4 13:00: Correct.

5 13:01: And some self-insured employers that are contracted with
6 services companies, those service companies are processing multijurisdictional
7 claims.

8 13:12: Uh-huh.

9 13:13: And every state or jurisdiction has somewhat different rules;
10 right?

11 13:20: Sure.

12 13:21: So--right. And I think that sometimes there can be some
13 disconnect there between the service company and the self-insured employer and
14 what the hands-on activity is. Does that make sense?

15 13:39: Right.

16 13:41: I mean, I totally agree with you. You know, it's there. But, you
17 know, dependent on-- We've had challenges this year in terms of the reported
18 losses and the accuracy of that and...

19 13:52: Right. No. Yeah. My comment wasn't really necessarily for
20 this specific issue, because obviously that does need to be cleaned up. But I was
21 thinking just more globally, why should we consider--I think it's just education.

22 14:06: Yeah. I'm going to--

23 14:07: Yeah.

24 14:07: --address Chris' comment. You know, I--yeah. Self-insured
25 employers can take--I kind of call it a credit, but I'm not sure why they don't all do it.

1 It is available. It is allowed by rule. As far as, like, an automated setup, you know,
2 there still are requirements surrounding taking of that credit, if you want to call it that,
3 because it can only be applied to accepted nondisabling claims.

4 14:31: Sure.

5 14:32: So the self-insured employer would have to go through and
6 evaluate that on each claim, make sure it qualifies. Make sure, you know, they're
7 not taking more than what the medical cost might be on that claim. We've seen that
8 be kind of an issue, because the max is \$2,000. But if you're only paying \$1,500 on
9 the claim, for example, you can't...

10 14:48: And with changes made here, which is awesome.

11 14:50: Right. So there are some details around that would make the
12 automated piece kind of difficult to do.

13 14:56: Right.

14 14:56: But yeah. All self-insured employers could potentially take that
15 credit, if you want to call it that.

16 15:01: Well, and I think it's a difference between a credit and a
17 deductible, to get to part of your question. Is it on the insurance side?

18 15:11: Uh-huh.

19 15:13: The employer reimburses the insurer.

20 15:16: Right.

21 15:17: And so it's an accounting function, really, for self-insureds.

22 15:20: Well, right.

23 15:21: Right.

24 15:23: Okay. Yeah. So that was a very good discussion. And if there
25 are--I mean, we will continue to think of ways to reach out. I know we are making

1 some amendments for our bulletin to reference self-insured employers more
2 explicitly, make sure that people know. We do believe that probably any automation
3 will have to happen on the self-insured employer's side, because everybody
4 requested that a little bit differently, and things like that.

5 15:49: Right.

6 15:49: But that is a very good question, and something for us to think
7 about while we're looking at our processes, for sure. Okay. Anything else on that
8 topic? No?

9 So moving on to Issue 1263, which refers to--which re--is related to
10 indicated--incurred but not reported losses. And the issue here is that Rule
11 180(1)(e) provides that for the purposes of determining a self-insured employer's
12 security deposit losses incurred, but not reported, IBNR, is calculated "By applying a
13 loss development factor against the employer's annual incurred losses." The
14 Division believes that this description may be technically inaccurate, as the IBNR
15 factor is applied against incurred losses for the pre--for the reporting year, as well as
16 outstanding reserves. To be consistent with the intent of the rule and
17 communications with the industry, the Division intends to change the term "annual
18 incurred losses" to "incurred losses."

19 This is almost a housekeeping issue, but we did want to keep people
20 apprised that we will be, one, making this change and, two, I think our last industry
21 notice, which indicated our plan for applying an IBNR factor to security deposits will
22 be carried out, I think, as we last communicated, so...

23 17:19: Is the IBNR factor just going to be one factor that applies to
24 everyone or...

25 17:24: Yeah. It will be a set factor. It will--I don't remember the exact

1 numbers off the top of my head, but it will start low, and then eventually ramp up
2 to...

3 17:34: I think it's 7 percent, then 14, and then 20.

4 17:37: Yeah. So over the next--

5 17:39: Do you have another copy of...

6 17:40: --three years-- Take this.

7 17:44: Thank you.

8 17:54: Yeah, that doesn't make a whole lot of sense. But I think we've
9 talked about that in previous years, the logistics, so I understand that. But
10 everyone's financials are so different on what their IBNR really is on what their
11 actuary projects.

12 18:08: Yeah.

13 18:08: Having one aggregate factor that applies to everyone is not
14 very accurate. But I also understand, like I said, the administrative part of having to
15 analyze everybody's financial statements.

16 18:24: Yeah. No. Thank you for that input. I think that is something
17 we are acknowledging of. And just for the reasons you mentioned, it's kind of
18 technically a challenge for us to know what the actuarial fair value of an IBNR would
19 be for each individual employer, or type of employer even. But I think the 20
20 percent was recommended to us by our actuary as something that would be
21 adequate for the average self-insured employer, so...

22 18:56: And I think one of the challenges you came up with is not self-
23 insureds do an actuarial review of their own claims. For those that do, would it be
24 possible to consider, or is this for some future date? Probably I shouldn't be bringing
25 this up now, but--

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19:10: No.

19:10: --I'm going to anyway. For those that do--actually do conduct their own actuarial analysis, maybe submit a copy of that report and use that in place of what's being required by rule.

19:24: Yeah, that's certainly an issue that we can look at. So the recommendation-- And I think there is that-- So if there's IBNR already included in the claims reserve data-- Is that right?

19:36: Well, we just--we actually do spent a lot of money on actuarial...

19:39: Yeah. Okay.

19:39: Every year.

19:40: Sure. Yeah.

19:41: So we have an IBNR factor, you know,--

19:43: Okay.

19:44: --that we present to address all that so we get a handle on what our claims re--total claims reserves really are. So--

19:50: Okay.

19:50: --we have that data.

19:51: Yeah.

19:52: And everyone should have to. I mean, you can't really have a certified audit, right, without having an actuary study to go along with it, I would think, at least not for a public employer under (unintelligible)--

20:03: Right.

20:03: --rules, you can't. Maybe private is different.

20:07: Adam here. With the January 1st rules, there is a provision that

1 allows us to look at an actuarial study that exempts the entire security deposit
2 analysis. So that would include an IBNR, but there isn't a provision just to look at
3 IBNR.

4 20:22: Right.

5 20:23: But there is the whole enchilada, so to speak.

6 20:30: Yeah. Yeah. So yeah, that--we will look at that again. I'll
7 probably listen to these--the recording of this a few times and make sure I get it right,
8 but I'll follow up with you if I have--

9 20:41: Okay.

10 20:41: --need some clarification on what exactly you would
11 recommend, so...

12 20:45: Okay. Sounds good.

13 20:45: Good. Okay. Anything--any other comments on IBNR? No?
14 Hearing none, we'll move on to Implementation of House Bill 2336.

15 House Bill 2336 provides the director may determine the claims
16 processor for an individual self-insured employer that defaults, is decertified, or
17 cancels its certification in the same manner as a self-insured employer group. The
18 rule should be reviewed for consistency with the new statute.

19 So skipping down, we have looked at the rule, and we think to
20 implement the provisions of the new law the Division intends to amend rule--Division
21 50, Rule 190(1) to provide a single process for designation of a claims processor
22 under ORS 656.443. The text of the rule is included in the background paragraph.
23 Essentially, we will just amend the (b) to refer to both self-insured employers and
24 self-insured employer groups to make that more clear, and then we will be deleting
25 the provisions in paragraph (A) and (B), because those are--that separate process is

1 no longer needed for individual groups--or individual self-insured employers.

2 Are there any comments or concerns or general questions about how
3 this new process is going to work? No? Okay.

4 Our next issue is regarding revocation of self-insurance certification.
5 During some reviews, we found some inconsistencies in our rules between the
6 statute. So ORS 656.430(9) and 656.440 provide two processes for revocation of a
7 self-insured employer's certification. I won't read these, but the gist is that 656.440
8 provides a 10-day process. 656.430(9) provides that in times when that 10-day
9 process is not required the Division will use a 30-day process. And then it gives
10 certain circumstances of when that 30-day process must be used.

11 Our--we did review the rules. 656 Division--or sorry, 436 Division 50,
12 Rule 200 provides that "Except as provided in .430(9), notice of certificate revocation
13 will be issued in accordance with the provisions of ORS 656.440." But given the
14 broad scope of reasons for revocation under ORS 656.430(9), it is not clear when
15 the 10-day process is intended to be used. We believe that it's most appropriate in
16 cases where there's a financial risk to the workers--well, there's an immediate risk of
17 default, or a risk of workers being left without coverage.

18 There are also several other rules which give the process individually,
19 so that's in Rule 150, 170, 180, 190, 195, 260, 290 and 340. Just to improve the
20 consistency with the statute and to give more clarity to self-insured employers about
21 exactly what process will happen if they're--in the case of a serious, I guess, event,
22 we'd like to consolidate some of those provisions into the 200 and 340 rules to make
23 it more clear and have them less spread out. So we'd just have references in those
24 other rules to which one's applicable, and then clarify exactly when .430(9) applies
25 and when it does not.

1 We're still kind of working on the analysis of how the statutes are
2 meant to apply. But if anybody has any comments or suggestions, yeah, we are
3 definitely open.

4 Okay. Hearing none, we can move on. That is kind of a--more of a
5 technical thing that's probably of great interest on our side, and we understand why
6 people aren't, yeah, super, super involved or invested.

7 25:52: Just a reminder to anybody who might be on the telephone with
8 us, feel free to speak up at any time. You don't have the advantage of being able to
9 make eye contact with the people around the table. So if you're with us, I'm
10 assuming you're basically a member of the committee, so we'd like to hear from you.

11 26:09: Yeah, absolutely. And if I'm reading too fast, or if you want me
12 to repeat anything, anybody, please, too, let me know.

13 Okay. Our next issue is 1358, which has--relates to the
14 implementation of House Bill 2186. House Bill 2186, requested by Special Districts
15 Association of Oregon, permits a self-insurance program under ORS 30.282(3) to be
16 certified as a self-insured employer group. OAR 436 Division 50, Rule 280 provides
17 that a self-insured employer group made up of governmental subdivisions must have
18 formed an intergovernmental entity as provided under ORS 190, Rule 3 to 110. The
19 Division intends to-- Sorry. That's statute, not rule. But-- Sorry. The Division
20 intends to amend the rule to recognize that a public self-insured employer group
21 may be organized as a self-insurance program under ORS 30.282(3) to be
22 consistent with the new law.

23 In addition, Rule--Division 50, Rule 0280(1)(b) requires a new applicant
24 to submit proof that the governmental subdivisions have formed an
25 intergovernmental entity, and the Division may need to establish a similar

1 requirement for self-insurance programs under ORS 30.282.

2 We believe these divisions are already required--these types of entities
3 are already required to submit documentation to the Division of Financial Regulation
4 to become exempt from the Insurance Code. So we are, I think, basically going to
5 look for proof of that exemption, and not require duplicate documentation to be...

6 28:02: Excellent.

7 28:03: Yeah. And to be clear, we--this will only really apply to new
8 self-insurance groups. We believe that you guy are already--self--Special Districts is
9 already squared away, so...

10 28:16: Oh, okay. Thank you.

11 28:17: Yeah.

12 28:18: Finally.

13 28:18: Yeah.

14 28:19: Legit.

15 28:21: Yeah. So yeah, this is a technical fix to be consistent with the
16 statute, so we don't expect there to be too many different alternatives. But if
17 anybody does have any suggestions, or if Special Districts would like to provide any
18 additional input, we'd be glad to hear it.

19 Well, great. Well, yeah, thank you again for all your work on this. And
20 we're glad we could--

21 28:58: Thank you. We appreciate it.

22 28:58: --get it all taken care of.

23 All right. Our next issue, and our last full issue, has to do with the
24 notice of self-insured employer group member terminations. OAR 436, Division 50,
25 Rule 290(3) requires a self-insured employer group to submit financial and coverage

1 information to the director no later than 10 days before the effective date of a
2 member's termination or cancellation. One group administrator noted that in some
3 cases a member obtains coverage without the knowledge of the group
4 administration--group administrator, and termination is effective immediately. The
5 rules could be amended to allow for notice to be submitted on or after the date of
6 termination in these instances, or to establish a requirement for the member to
7 provide--the member themselves to provide prior notice before terminating
8 membership.

9 Yeah, so we were looking at a few things. One thing would be to
10 separate requirements for cancellations and terminations. So when a group--a
11 member's membership ends because of something that the member does or
12 something that the group does would be separate processes, because now they're
13 kind of lumped under one rule. And that's what kind of creating this catch 22 when a
14 member leaves and it leaves the group administrator on the hook for something that
15 they had no control over--or limited control over, I should say.

16 And I think what we could really use the group's input on is whether or
17 not it would be appropriate to require the member to give notice to the group before
18 they leave, because currently that's not something that's in rule, and I don't know if
19 groups have their own operating rules that they work under.

20 31:05: We don't have a rule for that.

21 31:07: Okay.

22 31:08: Yeah. They treat it, unfortunately, like an insurance
23 transaction. So--

24 31:12: Yeah.

25 31:13: --if they decide to go with SAIF or someone else, we'll receive

1 notice. Unfortunately, usually not even on the renewal day, but sometime during the
2 month they'll put--

3 31:23: Okay.

4 31:23: --us--they'll send us something, "Oh, by the way, we left."

5 31:28: Right.

6 31:29: So that what--that's what makes it hard. Even as much
7 education as we try to put out there,--

8 31:32: Yeah.

9 31:32: --we still find ourselves in that situation a lot.

10 31:38: And are--do you usually get advance notice at all, or is it--it's
11 just...

12 31:42: Very rarely.

13 31:42: Okay.

14 31:42: Yeah.

15 31:44: That's not a comment on the insured market, either.

16 31:46: Sure. Yeah.

17 31:47: When an employer decides to go someplace else, we often find
18 out about it after it's happened.

19 32:00: Yeah. From our experience, we'd even be fine with, you know,
20 no later than 30 days after the termination date or something like that, because
21 usually within that first 30 days we find out.

22 32:11: Right.

23 32:12: We send a bill, and they go, "Why did we get this bill, my agent
24 moved me." Thanks for the notice. Thanks for--

25 32:17: Yeah.

1 32:18: --telling us.

2 32:20: And one thing about--if we tie it to obtaining coverage
3 elsewhere, we have kind of a little hole there where we actually have members that
4 don't need Workers' Compensation coverage.

5 32:29: Oh, sure.

6 32:29: So they'll drop it for their volunteers or Board members,
7 because they just don't want it anymore.

8 32:39: Yeah. Yeah. I think our primary concern is in the event when a
9 member's exit would actually affect the viability of the group, or cause them to have
10 less members than statutorily required. So if it started affecting their financial
11 viability, then that's why we want the advanced notice. So I think having it come 30
12 days later than a change that might happen might be problematic for us, but I think
13 we still understand that if you don't know about something you can't report it to us.

14 33:23: Jody here.

15 33:24: Yeah.

16 33:25: As I'm looking at this rule, even though 263--it does separate
17 the private employer members from the public employer members, but it also
18 combines them as well in the same paragraph, in the same rule. So I'm wondering if
19 maybe we can break that down at some point and discuss the option of looking at a
20 different parameter for public groups or public members that have small districts with
21 volunteers only, versus a private group with operational functions, incorporations,
22 what have you.

23 34:14: Sure. Yeah, I think we can definitely look at what differentiation
24 would be appropriate there, so...

25 34:24: Okay.

1 34:27: Okay. Well, I think we'll continue looking at this. Hopefully the
2 stakeholder that raised the issue will also provide some more feedback, and
3 maybe-- I'll try to follow up with them, as well.

4 Okay. So there's nothing else on that issue. We just have a few
5 housekeeping things that we're also going to take care of here. We want to clarify
6 under Division 50, Rule 150 that the director may take one or more actions when a
7 self-insured employer rates weak on their financial liability analysis by changing A,
8 B, or C to A, B and C, so--and then saying it will include, but not limited to, one or
9 more of the following actions. And I believe we're also going to make similar
10 changes to 260, which is not on here. That's just allows more flexibility in how we
11 apply that rule.

12 We're also going to amend Rule 175(3) to clarify that the self-insured
13 employer must report claims loss data to the director by March 1. That's just absent
14 in the rule, and it hasn't been entirely clear on where that data is supposed to be
15 reported to, to some stakeholders.

16 And the last change is to Rule 180(4)(c), to amend it to refer to both
17 self-insured employers and self-insured employer groups.

18 Is there any comments on any of those? Are there any-- We do still
19 have a little bit of time, so if anybody has any other issues or topics they'd like to
20 discuss, we have a little time for that as well.

21 36:34: I have one more housekeeping--

22 36:35: Sure.

23 36:36: --thing. 436-050-0195(2)(a), it references--it speaks to
24 endorsements to include legal entities, and it references a form, and the form is
25 incorrect.

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36:54: Oh.

36:54: It should be Form No. 1865, not 1869. That's all I have.

37:04: Thanks, Jody.

37:16: I do want to let you all know that we're having another advisory committee meeting starting at 9:30 on the Division 60 Rules, and implementation of a house bill regarding survivor benefits. So you're welcome to stay for that, anybody. And it could be that some of you plan to do that, but I didn't know if you all knew that we were going to have that meeting as well.

37:47: All right.

37:47: Okay. Thank you all very much for coming this morning. Again, if you do have additional thoughts on any of the issues we talked about, you know, within about a week or so, if you can get back to--you can just send me an email. It doesn't have to be anything formal. Or just pick up the phone and call me. And I can document whatever you'd like to provide, and then put it--make it part of the record.

And of course, when we file proposed rules you'll get another shot, and you'll be able to see the actual text and provide testimony if you have thoughts on ways to improve, or there's a problem with something that we do propose. We want to hear from you.

38:27: Thank you.

38:28: Thank you.

38:30: Yeah.

38:31: Bye. Have a great day.

(WHEREUPON, the proceedings were adjourned.)

CERTIFICATION OF TRANSCRIPT

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I, Amanda Knapp, as the transcriber of the oral proceedings at the 8/23/17 hearing before Administrative Law Judge Bruyns, certify this transcript to be true, accurate, and complete.

Dated this 8th day of September, 2017.



Transcriber

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3 **CERTIFICATION OF TRANSCRIPT**

4 I, Ashlee Kohan, as the proofreader of the oral proceedings at the 8/23/17 hearing
5 before Administrative Law Judge Bruyns, certify this transcript to be true, accurate,
6 and complete.
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8 Dated this 8th day of September, 2017.
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