

WORKERS' COMPENSATION COURT ADMINISTRATOR RULES

as last amended effective February 22, 2008

RULE 1.

DETERMINATION OF MEDICAL COSTS

A good faith effort shall be made by the self-insured employer or insurance carrier to pay all charges, or the portion of all charges which are in compliance with the Schedule of Medical Fees. All medical charges which are in compliance with the Schedule of Medical Fees should be paid within thirty (30) days after such charges are submitted to the self-insured employer or insurance carrier. If such good faith payment is not made within sixty (60) days of the charges being submitted, and the issue of compensability of the injury, necessity of treatment, or other issues requiring a judicial determination are not raised before a Judge of the Workers' Compensation Court, the Schedule of Medical Fees will become applicable only if ordered by a Judge of the Workers' Compensation Court.

Charges disputed due to conflicting interpretation of the Schedule of Medical Fees may be submitted to the Administrator by the medical provider to determine the proper amount due in accordance with the Schedule of Medical Fees.

A request for Administrative Review of disputed medical charges may be made by filing a Form 18, REQUEST FOR ADMINISTRATIVE REVIEW OF DISPUTED MEDICAL CHARGES. A copy of the Form 18 and all supplemental materials shall be sent by the medical provider to the self-insured employer or the insurance carrier. A copy of the actual medical bill in dispute must include dates of service, procedure codes, charges for services rendered and any payment received, and an explanation of unusual services or circumstances.

When a Form 18 is received by the Administrator and it is determined that the Workers' Compensation Court lacks jurisdiction in the matter, a Submission Form shall be forwarded to the self-insured employer or insurance carrier to be signed and returned by their authorized legal representative before the Form 18 will be reviewed.

When the Form 18 is received by the Administrator and it is determined that the Workers' Compensation Court has jurisdiction over the cause of action, all parties will be notified by mail. All parties shall have thirty (30) days from the date of notification to submit further evidence,

documentation, or clarifications to the Administrator. After thirty (30) days, a decision will be determined by the Administrator and an order will be issued. Prior to this determination, the Administrator may request all parties to attend a hearing on the matter.

Any party feeling aggrieved by the order of the Administrator shall have ten (10) days to appeal the ruling to a Judge of the Workers' Compensation Court. A decision must be entered by the Administrator before any appeal may be brought.

[Adopted effective April 30, 1989.]

RULE 2.

OWN RISK EMPLOYERS

Any employer subject to the Workers' Compensation Act, who has not otherwise secured compensation insurance for its employees, shall file with the Insurance Department of the Court, a completed Form 1-B, Employer's Application for Permission to Carry Its Own Risk Without Insurance. This application shall be submitted to the Court at least sixty (60) days prior to the desired effective date, or renewal date for existing permits. The application shall include complete answers to all questions contained therein and shall include satisfactory proof as to the employer's ability to pay an award made by the Court. All attachments listed on the Form 1-B must be submitted with the application.

With the exception of governmental entities, an employer desiring to self-insure must meet all the following qualifications and guidelines:

- (1) Have been continuously engaged in business for a period of not less than five (5) years;
- (2) Have had an average minimum payroll of not less than one million dollars (\$1,000,000.00) in each of the preceding three (3) years;
- (3) Have a shareholder's equity of not less than five hundred thousand dollars (\$500,000.00); and
- (4) Employ not less than one hundred (100) employees.

Applications must attach a financial statement (preferably audited), including a balance sheet and income statement. If the company's current fiscal year-end financial report is not available at the time of application, it should be submitted to the Court promptly. The application must also include a current proof of reinsurance (binder or certificate).

Any subdivision or subsidiary of any employer must provide a written guarantee from its parent company which states the parent company will be fully responsible for any liabilities that its subdivision or subsidiary may incur under the Workers' Compensation Act.

A self-insured company may be required to post a surety bond, letters of credit or initiate a reserve self-funding program. If posting a surety bond or letter of credit, the amount required will be determined by the Court Administrator. If the self-insured company self-funds their reserves, the following guidelines will apply:

- (1) An initial fund amount, determined by the Court Administrator, will be deposited into a separate Workers' Compensation Claims Fund. This base amount will remain constant;
- (2) The self-insured company will deposit, into this account, the amount of each claim reserved;
- (3) Claims will be paid from this account. Once the claim is closed, excess money reserved maybe returned to the self-insured company;
- (4) All interest earned from this account may be retained by the company; and
- (5) The Court reserves the right to order a third party Administrator to oversee this reserve fund.

An employer must obtain a policy of reinsurance from an approved or licensed carrier. Specific excess insurance is required by the Court. Aggregate excess coverage may be required. The reinsurance agreement shall contain a minimum of thirty (30) days written notice to the Court of cancellation. An insurance certificate or binder must accompany the application. A copy of the policy should be submitted to the Court promptly.

Any employer may be exempt by the Court from any of the above qualifications upon showing that the employer is otherwise financially able to pay any

award made by this Court and the employer is in compliance with the statutes and Court Rules at the time the application is made.

Claims should be handled by a Court approved claims servicing company or by a Court approved benefit's administrator within the self-insured company. If the self-insured employer employs a benefit Administrator for claims handling, the experience and qualifications of this person must be submitted at the time of the application. Court approval of the Self-Insurance Permit will also allow the benefits Administrator to service claims. An audit of the reserves may be required by the Court at any time.

A self-insured employer may not collect a premium from an employee for workers' compensation.

A governmental entity may make application to carry its own risk without insurance provided it furnishes the Court with reasonably detailed information relative to its financial status, including a definite statement of the amount it has specifically appropriated for workers' compensation claims. Proof of reinsurance or other information regarding the governmental entity's ability to fund its obligation under the Workers' Compensation Act may be required.

Failures to comply with any provision of the Workers' Compensation Act or any of these Rules shall be grounds for revocation of the own-risk permit.

The Court Administrator may, at anytime, call a Show Cause Hearing for any self-insured employer. The Court shall give ten (10) days prior notice of such hearing.

Any motion to revoke a Self-Insurance Permit shall be filed with the Court Administrator. The Administrator shall conduct an investigation and if necessary a hearing on the revocation of said permit.

Any order revoking a Self-Insurance Permit may be appealed to a three-judge panel of the Workers' Compensation Court.

[Adopted effective September 1, 1989.]

RULE 3.**GROUP SELF-INSURANCE
ASSOCIATIONS**

This rule relates to a regulatory function of the Workers' Compensation Court and not to a judicial function. Approval by the Supreme Court of the State of Oklahoma would be inappropriate (See "Order of the Supreme Court," September 28, 1981).

Section 1: Authority

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Section 2: Purpose

The purpose of this regulation is to set forth Rules, forms and procedural requirements which the Court deems necessary to carry out the provisions of 85 O.S. Section 149.1.

Section 3: Definitions

- (a) "Court" means the Workers' Compensation Court of the State of Oklahoma.
- (b) "Group Self-Insurance Association" or "Association" means an association organized by two or more employers having a common interest which have entered into agreements to pool their liabilities under the Oklahoma Workers' Compensation Act.
- (c) "Employer" shall have the definition provided by 85 O.S. Section 3 (3).
- (d) "Common Interest" means employers engaged in the same or similar types of business or who otherwise have a recognizable common purpose for associating. If an application of an association is approved by the Court, different businesses which are owned or controlled by a member of the association are also eligible for membership in such association. For purposes of this regulation, control shall be a "majority interest" as defined by the Experience Rating Plan approved by the State Board for Property and Casualty Rates.
- (e) "Certified Audit" means an audit upon which the auditor expresses his professional opinion as to whether or not the accompanying statements fairly present the financial position of the group

self-insurance association and whether or not such statements are in conformity with generally accepted accounting principles consistently applied, including tests of the accounting records and other such auditing procedures that are considered necessary in the circumstances.

- (f) "Gross Premium" means the annual premium for each employer developed by using rates and classifications approved by the State Board for Property and Casualty Rates.
- (g) "Standard Premiums" means the gross premium adjusted by experience modification factors developed in accordance with an Experience Rating Plan approved by the State Board for Property and Casualty Rates.
- (h) "Normal Premium" means the standard premium less any allowable discount pursuant to Section 11 hereof.
- (i) "Member" means an employer party to an indemnity agreement for membership in a group self-insurance association.
- (j) "Act" means the Oklahoma Workers' Compensation Act as provided by Title 85 of the Oklahoma Statutes.
- (k) "Administrator" means the individual, partnership, or corporation designated and authorized as the representative of the members in the pooling of the liabilities under the Act and matters incidental thereto.
- (l) "Indemnity Agreement and Power of Attorney" means the written agreement executed by each member of the association through which each member:
 - i. agrees to assume and discharge, jointly and severally, and liability under the Act of any and all members party to such agreement; and
 - ii. grant the administrator power of attorney to act for and to bind the members in all transactions relating to or arising out of the operations of the association.
- (m) "Member Supervisory Board," or "Board," means the representative body selected by the members which is to be responsible:
 - i. for holding and managing the assets;
 - ii. for directing the affairs of the association;

and

- iii. for assuring that the association, through its members, is financially sound and able to meet its obligations under the Act.

Section 4: Application for Approval as a Group Self-Insurance Association: Requirements, Approval, and Review

Two or more employers having a common interest, as defined in Section 3, may be approved by the Court as a group self-insurance association for the purpose of entering into agreements to pool their liabilities under the Act. Such application shall be made in a form acceptable to the Court and shall be verified by the oath of at least two members of the members' advisory board of the association or the administrator.

If after review of the association's application, as well as the additional information as required by Section 5 hereof, the Court may approve the association's application if it has satisfactory proof of:

- (a) the solvency of each member of the association;
- (b) the financial ability of each employer to meet its obligations as a member; and
- (c) the ability of the association to pay or cause to be paid the compensation in the amount and manner and when due as provided for in the Act.

Any application so approved shall be subject to all conditions and requirements set forth in these Rules and regulations. In order to determine continued compliance with the law and these regulations, such application shall be reviewed on an annual basis or whenever deemed necessary by the Court Administrator.

Section 5: Application for Approval as Group Self-Insurance association: Additional Requirements.

The group self-insurance association's application should be submitted thirty (30) days prior to the effective date and shall be accompanied by all of the following:

- (a) A copy of the members' indemnity agreement and power of attorney, as required by Section 12 hereof binding the association and each member thereof,

jointly and severally, to comply with the provisions of the Act and copies of any other governing instruments of the proposed group self-insurance association;

- (b) An executed copy of the application of each employer for membership in the association on the approved association's application effective date;
- (c) A pro forma financial statement of the association, in accordance with the financial reporting requirements in Section 8 of this regulation. Such financial statements, or other verified information, shall indicate that the membership of the proposed association has a combined net worth of at least two million dollars (\$2,000,000.00);
- (d) A composite listing of the estimated annual gross premium to be developed by each member of the association individually. The aggregate shall contain a start-up premium of two hundred fifty thousand dollars (\$250,000.00), and not be less than five hundred thousand dollars (\$500,000.00) by the end of the first fiscal year, provided any group self-insurance association not formed in conjunction with an established employer trade association operating in the state of Oklahoma for not less than five (5) years must demonstrate a star-up funding of at least four hundred thousand dollars (\$400,000.00), with an annual premium of at least one million dollars (\$1,000,000.00);
- (e) An insurance binder or certificate of excess insurance issued by an authorized insurer in an amount acceptable to the Court and that complies with the requirements as in Section 9 hereof;
- (f) A designation of the initial members' supervisory board and of the administrator of the association, including properly executed biographical affidavits for each. Affidavits are to be submitted in a form acceptable to the Court;
- (g) Information which shall satisfy the Court that the association either within its own organization, or by contract with an approved servicing organization, has ample facilities and competent personnel to service its program with respect to underwriting matters, claims adjusting, and industrial safety engineering;

- (h) A confirmation of the fidelity bond in a form amount agreeable to the Court;
- (i) A copy of the indemnity agreement and power of attorney as required by Section 12 that binds the association and each member thereof, jointly and severally, to comply with the provisions of the Act; and
- (j) A projection of administrative expenses in an amount, for the first year of operation, and as a percentage, of the annual standard premium collected, in a form acceptable to the Court.

Section 6: Approval of New Members of the Association

A new membership may not become effective without Court approval. All applications for membership, in a form satisfactory to the Court, shall be filed with the Court. The application shall include evidence of the execution of the indemnity agreement and power of attorney as required by Section 12 hereof, with approval of the applicant by the association, and shall be accompanied by current financial statements satisfying the conditions as described in Section 8 hereof. Upon renewal of the application by any association, a complete list of active members shall be provided, including actual premiums paid during the past year and projected annualized premiums for the application year.

Section 7: Investment and Reserve Requirements

The members' supervisory board of an association may, in its discretion, invest its funds in either of the following investments:

- (a) Savings accounts or certificates of deposit in a FDIC or FSLIC insured institution; or
- (b) Direct obligations of the United States Treasury, either as notes, bonds, or bills that are backed by the full faith and credit of the United States Government.

An association shall maintain unearned premium and loss and claim reserves computed in a manner acceptable to the Court.

Section 8: Filing of Reports

On or before the one hundred twentieth (120) day after the end of its fiscal year, every association shall file with the Court an annual report. Such

reports shall be submitted in a form acceptable to the Court and shall be verified under oath either by the administrator of the association or by other principal officers or members of the supervisory board.

The annual report shall reflect the association's financial condition. The reporting of financial condition required shall consist of a certified audit report prepared by either an Oklahoma independent certified public accountant or by a Big Eight accounting firm. Audits must include a complete breakdown of all monies collected by the group, including the amount discounted and a complete breakdown of expenses. The audit should footnote and analyze completely all paid claims and claims reserved but not reported. A footnote must also be included to indicate if payments to contracted parties are in accordance with current contracts.

An interim financial statement shall be filed sixty (60) days following the midyear fiscal anniversary of the association. This statement need not be audited, but should reflect pertinent data regarding income, including the standard premium, discounts, interest earned, and expense constant fees, as well as a breakdown of the association's expenses.

In addition to financial reports, every association approved by the Court shall file annually a reporting of its members' experience as a group self-insurer in a form acceptable to the Court.

The association may be required to submit to the Court an independent audit of the reserves prepared by an acceptable firm or by the association's excess insurance carrier. The Court may order an audit of the reserves at any time.

Section 9: Contracts for Excess Insurance

Specific and aggregate excess insurance or reinsurance may be required as a condition for licensing a group self-insurance association and shall be subject to the following Rules and conditions:

- (a) A contract or policy of excess liability insurance shall not be recognized by the Court in considering the ability of an applicant to fulfill its financial obligations under this act unless such contract or policy:
 - 1) Is issued by either an insurance company duly licensed by the State Insurance Commission or is otherwise authorized to write such coverage in the State of Oklahoma.

- 2) Is not cancelable or terminable for any reason except upon thirty (30) days written notice by registered or certified mail to:
 - i. the other party to the policy, and
 - ii the Court.
 - 3) Is automatically renewable at the expiration of the policy period except upon a thirty (30) days written notice by the party not renewing the policy, either by registered or certified mail to:
 - i. the other party to the policy, and
 - ii the Court.
- (b) Copies of the complete contract or policies of excess liability insurance, complete with all endorsements thereto, shall be filed with the Court.
 - (c) The aggregate coverage attachment point should not exceed one hundred percent (100%) of the standard premium, unless specifically authorized by the Court.
 - (d) Under certain conditions, an irrevocable Letter of Credit may be presented in lieu of aggregate excess insurance. The form and amount of said Letter of Credit must be approved by the Administrator of the Workers' Compensation Court.

Section 10: Responsibilities of Members' Supervisory Board

The members' supervisory board shall be responsible for holding and managing the assets and directing the affairs of an association and shall be elected in the manner prescribed by the association's governing instruments. All board members must be members of the association. A board member shall not be either an owner, officer, or employee of any entity under contract with the association.

The board shall supervise the finances of the association and the association's operations to such extent as may be necessary to assure conformity with these Rules and regulations, the members' indemnity agreement and power of attorney, and the association's governing instruments. The members' supervisory board shall take all necessary precautions to safeguard the assets of the association, including (but not limited to) the following:

- (a) Monitoring the financial condition of each member of the association, and doing all other acts to the extent necessary to assure that each member continues to be able to fulfill the obligations of membership, promptly reporting to the Court any grounds for believing that either a change in any member's financial condition, withdrawal of a member, or any other circumstances might affect the association's ability to meet its obligations.
- (b) Designating an administrator to administer the financial affairs of the association, who shall furnish a fidelity bond with the association as obligee, in an amount sufficient to protect the association against the misappropriation or misuse of any monies or securities. The amount of the bond shall be determined by the Court and evidence of such shall be filed with the Court, bond being one of the conditions required for approving the association.
- (c) Retaining control of all monies either collected or disbursed by and for the association. All loss funds of any type shall remain in the custody of the board or the authorized administration; however, provided that a revolving fund for payment of compensation benefits due, and other related expenses, loss funds may be established for the use of any authorized service organization and shall furnish a fidelity bond covering its employees, with association as obligee, in an amount sufficient to protect all monies placed in such revolving fund. Should the bond required of the administrator also cover the monies in the revolving fund, separate bond shall not be required of the servicing organization with respect to such revolving fund.
- (d) Having the accounts and records of the association audited annually or at any time the Court deems necessary. The Court may prescribe a uniform accounting system to be used by self-insurance associations and/or servicing organizations, and the type of audits to be made in order that it may determine the solvency of the association. Copies of the audit shall be filed with the Court within one hundred twenty (120) days after the close of the fiscal year. An association's fiscal year may not be changed without prior Court approval.

- (e) Active efforts to collect delinquent accounts resulting from any unpaid premiums by members. Any member of an association who fails to pay the required premiums after due notice shall be ineligible for the self-insurance privilege until such past due account, including cost of collection, has been paid.
- (f) The members' supervisory board shall hire legal counsel when deemed necessary to represent the membership in workers' compensation litigation. Board members will be responsible for monitoring fees paid to legal counsel.
- (g) Neither the members' supervisory board nor the administrator shall utilize any of the monies collected as premiums for anything unrelated to the purposes of the group self-insurance association, to workers' compensation, or to securing the members' liability under the Act. Furthermore, they shall be prohibited from borrowing any monies from the association without advising the Court of the nature and purpose of the loan and obtaining the Court's approval. The board may, at its discretion, invest its funds in accordance with Section 7 hereof.
- (h) The members' supervisory board shall assure that the administrator of the association and all records necessary, to verify the accuracy and completeness of reports submitted to the Court, are maintained at a central location within the State of Oklahoma.
- (i) The members' supervisory board shall assure that payroll audits of all members of the association are conducted in accordance with Rules, classifications, and rates approved by the State Board for Property and Casualty Rates, as directed by the National Council for Compensation Insurance (NCCI).
- (j) The association's supervisory board and the Court Administrator should be notified in writing of all disputes regarding proper rate classification codes. The Court may appoint a certified safety professional to review the scope manual to determine the applicable classification code. The expense of the professional service will be paid for by the association.
- (k) The members' supervisory board shall notify the Court prior to all board meetings. Copies of the minutes of all board meetings shall be submitted to the Court in a timely manner.
- (l) The Court must be notified within ten (10) days of any change in the association's board. Any new board member must submit to the Court a properly executed biographical affidavit.
- (m) The board may designate a marketing firm or individuals to market the association's program. The marketer(s) of an association's program(s) must be either licensed agents in the State of Oklahoma, or approved by the Administrator of the Workers' Compensation Court. Marketing firms and all agents must be approved by the Court to market a self-insurance program. All marketing material must be submitted to the Court prior to being utilized by an association. Each sales interview must include a clear presentation of a proposed members joint and several liability.

Section 11: Premium Deposit, Advance Premium Payments, and Distributions of Surplus Funds

The members' supervisory board of a group self-insurance association shall not allow any advance premium discount to any member in excess of that allowed by the excess insurance underwriter.

On the association's effective date, the premium deposit of at least twenty-five percent (25%) of the first year's normal premium payable by each member of the association, shall have been paid into a designated depository, which shall certify receipt of same to the Court. The balance of the first year's premium shall be paid, either in quarterly or monthly installments at the discretion of the board, no later than the end of the ninth month of that insurance year.

Any surplus monies i.e. those in excess of the amount necessary to fulfill all obligations under the Act, may be declared refundable by the board, and the amount of such declaration shall be a fixed liability of the association at the time of the declaration. The date of payment shall be as declared by the board, and notice thereof shall be given to the Court with such supporting information as the Court may require. Payment of surplus

monies shall not be made until approved by the Court.

In the event of a deficit, such deficit shall be made up immediately either by assessment of the membership or by such alternate method as the Court may approve or direct.

Section 12: Indemnity Agreement

Every member of a group self-insurance association shall execute an indemnity agreement and power of attorney which shall set forth the rights, privileges and obligations of the member and the association and the powers and duties of the administrator. Such indemnity agreement and power of attorney shall be subject to the approval of the Court and shall contain in substance the following provisions:

- (a) An agreement, on a form approved by the Court, under which each member agrees to assume and discharge, jointly and severally, liability under the Act of any and all employers party to such agreement.
- (b) Provisions requiring that the members' supervisory board designate and appoint an administrator empowered to accept service of process on behalf of the association and authorized to act for and bind the association and members in all transactions either relating to or arising out of the operation of the association.
- (c) Provisions for the right of substitution of the administrator and revocation of the power of attorney and right hereunder.
- (d) Provisions that clearly state all of the coverages of the policy.

One copy of the indemnity agreement and power of attorney shall remain in the members' possession at the time the application for membership is made. One copy must be filed with the Court.

Section 13: Administration and Servicing of Association

Any individual, partnership, or corporation desiring to engage in the business of servicing an approved workers' compensation group self-insurance association shall make application to the Court prior to entering into a contract with the association, and shall satisfy the Court that it has or will have, at the time it commences operation, adequate facilities and competent personnel to

service a group self-insurance program with respect to underwriting matters, claim adjusting, and industrial safety engineering in such a manner as to fulfill the employer's obligation under the Act and the Rules and Regulation of the Court.

The application to the Court for approval to act as a servicing organization, for an association, may take the form of a letter explaining in detail the services that the company will be providing and describing its physical facilities and competency of its personnel to perform such services.

A servicing organization shall maintain a resident agent in the state of Oklahoma and that agent shall be authorized to act for the servicing organization on any and all matters covered by the Act and the Rules and Regulations of the Court.

A servicing organization shall file with the Court copies of all contracts entered into with the association as they relate to the services to be performed. Said contracts shall include those services necessary to fulfill the employer's obligations under the Act and the Rules and Regulations of the Court. In addition, any service contract must state that the servicing organization agrees to handle all claims incurred during the contract period to their conclusion, unless approval to transfer said claims is obtained from the Court prior to such transfer.

Any change in the servicing contract must be filed with the Court ten (10) days prior to the effective date.

Upon compliance with the above provisions to the satisfaction of the Court, a certificate of approval as a recognized and authorized servicing organization will be issued to the applicant.

Each individual, partnership, or corporation approved to act as a servicing organization for an association shall file an annual statement of financial condition with the Court within four (4) months after the close of its fiscal year, such statement having been prepared by an independent certified public accountant in a form acceptable to the Court.

Section 14: Termination of Members of Association

A member of an association may not be terminated unless at least ten (10) days written notice has been given to the member and the Court.

The association shall remain liable for all claims applicable to the period during which an employer

was a member of an association, including the ten (10) days period required for termination of membership.

Section 15: Revocation of Approval of Self-Insurance Application

Failure to comply with either any of the foregoing Rules or order of the Court within the time prescribed shall be considered good cause for revocation of the approval of an association's application. Noncompliance with any of the provisions of the Act shall likewise be deemed such cause. The Court shall give ten (10) days notice prior to such revocation to the association. Such notice shall be served either personally or by certified or registered mail, upon all interested parties setting forth the grounds therefore and affording the association an opportunity to introduce evidence and be heard. After a hearing, if the approval of the association's application is revoked, the revocation shall become effective thirty (30) days after issuance of the Court's order.

Section 16: Examination of Association

Whenever the Court deems it expedient for the protection of the interests of the people of the state of Oklahoma, it may make or direct to be made an examination into the affairs either of any association, member, marketing firm, or servicing organization approved in the state of Oklahoma.

Section 17: Penalties

Penalty for failure to comply with this regulation shall be as provided in Section 15 hereof.

Section 18: General Operating Guidelines of Association

A. The assets of a self-insurance association and control thereof are property of the self-insurance association members under the direction of its supervisory board members.

B. Any change in the by-laws and/or contracts with the association must be filed promptly with the Court.

C. Any false or misleading solicitation of membership in the group self-insurance association may be cause for cancellation of approval of the servicing organization, marketers, and the group self-insurance association as a whole.

D. Maximum operating expenses of the association should not exceed thirty-three percent (33%) of the standard premium. These expenses include the following:

- 1) Administrator's fee
- 2) Claims service fee
- 3) Marketing fees, billing and collection fees, and sales commissions
- 4) General operations expenses, including audits
- 5) Cost of excess insurance
- 6) Any other fees previously approved by the Court.

E. The members discount must be approved by the Court at the time of application and/or renewal. It may not be changed without Court approval.

F. Any recalculation, of premium due to experience modification, cannot be retroactive more than one hundred eighty (180) days.

G. A cancellation short rate penalty fee may not be charged if the member has been a member of the association at least twelve (12) months prior to cancellation.

H. An association soliciting large numbers of another group's membership or utilizing marketing materials not approved by the Court Administrator are grounds for immediate revocation of the approval of the servicing organization, marketers, and the group self-insurance association as a whole.

I. Any trade membership dues must be collected separate from the self-insurance group association. Services provided by the trade association must be fully explained to members joining the trade association.

J. A separate safety program may not be sold to a member by the marketer of the association. A marketer may sell only the association's program to a member or prospective member.

K. At least ninety percent (90%) of all expense constant fees collected shall be deposited directly into the association's general revenues. No portion of these fees may be paid to any group or individual contracted with the association in an amount greater than that of the normal sales commission allowed.

L. All billing and receiving will be supervised and reviewed by the claims servicing company and the administrator of the association. All monies must be deposited promptly in the self-insurance

association's designated Oklahoma depository account.

M. Wrongfully changing employee classification codes or rates are grounds for immediate revocation of the approval of the servicing organization, marketers, and the group self-insurance association as a whole.

N. The association shall annually file all applicable information with the NCCI for the calculation member modifiers.

O. The Court may, at any time, have a Show Cause Hearing for any group self-insurance association. The Court shall give ten (10) days notice prior to such hearing.

Section 19: Severability

If any provisions of this regulation, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of the regulation are severable.

[Adopted effective January 1, 1990.]

RULE 4.

MEDIATION

A. **Mediation.** Mediation in workers' compensation is governed by 85 O.S., Section 3.10, Workers' Compensation Court Rule 52, 85 Ch. 4, App., and this rule. Mediation refers to the process of resolving disputes with the assistance of a mediator, outside of a formal court proceeding. All workers' compensation issues may be mediated except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund. Mediation may be by mutual agreement of the parties or pursuant to Court order. Recommendations of a mediator are not binding unless the parties enter into a settlement agreement. General information about mediation in workers' compensation may be obtained from the Workers' Compensation Court Counselor Department.

B. **Mediation Without Court Order.** Unless ordered by the Workers' Compensation Court, mediation shall be voluntary, and shall not be conducted without the consent of the parties. Parties to a workers' compensation dispute subject to mediation may mutually agree to mediation by a

mediator certified by the Workers' Compensation Court, or may schedule and proceed with mediation independent of the Court's processes and with a mediator of their choice. A party may initiate voluntary mediation with a Court certified mediator by submitting a request for mediation in writing to the Court Administrator. The Administrator shall contact the opposing party to ascertain whether or not mediation is agreed to. Failure of the opposing party to respond to a request for mediation within fifteen (15) days of notification thereof shall be deemed a refusal to mediate. If mediation is agreed to, the parties shall enter into and submit to the Administrator a signed, written consent to mediate. Upon receipt of the consent, the Administrator shall provide the parties with the Court's list of certified mediators from which to select a mediator. If the parties are unable to agree upon a mediator, the Administrator shall assign a certified mediator.

C. **Mediation Pursuant to Court Order.** The Court may order mediation on its own motion, upon a party's Form 13 request for mediation order, or by agreement of the parties. Upon order of the Court, the Administrator shall provide the parties with the Court's list of certified mediators from which to select a mediator. If the parties are unable to agree upon a mediator, the Administrator shall assign a certified mediator.

D. **Effect on Claim.** A mediation conference shall not be cause for the delay of other proceedings in a case pending before the Workers' Compensation Court, including the completion of discovery, and the filing or hearing of motions, except by order of the Court. Mediation does not toll the statute of limitations.

E. **Scheduling.** Unless the parties and the mediator agree otherwise, the mediation conference shall be held at a time and location specified by the mediator. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference. The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

F. **Pre-mediation Statement.** Prior to the scheduled mediation session, the mediator may require each party to provide the mediator with a brief statement setting forth each party's position with regard to the issues that need to be resolved. At the direction of the mediator, the parties shall exchange the statements submitted to the mediator.

G. Conduct at the Mediation. The mediator will conduct an orderly session. Parties, if represented, will give the representative attending the mediation session full settlement authority. The mediator will be impartial in any mediation session, shall not coerce any party to resolve the dispute or disputes, or to settle the claim and shall avoid the appearance of coercing any party to do so.

H. Mediator Powers and Responsibilities. The mediator:

1. has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality;

2. does not have the authority to impose a settlement upon the parties, but shall assist the parties to reach a satisfactory resolution of their dispute;

3. may direct questions to any of the parties or their respective representatives to supplement or clarify information;

4. may obtain expert advice concerning technical aspects of a claim, whenever necessary and with the consent of the parties;

5. may conduct separate meetings (“caucuses”) with each party, but shall not use these meetings as a time to coerce any party to settle. No information from a caucus may be divulged without permission of the party participating in the caucus; and

6. immediately following conclusion of mediation proceedings per subsection J of this rule, shall report the results of the mediation to the Court Administrator on a form prescribed by the Administrator. The report is required for all cases mediated by mutual agreement of the parties or pursuant to Court order, whether or not the parties reached an agreement.

I. Confidentiality of Proceedings.

1. Mediation sessions are private and shall not be recorded or transcribed in any way. Those in attendance may take notes during the mediation but all notes shall be collected by the mediator at the end of each session and held in a confidential file until the mediation process is completed. When the mediation process is completed, whether or not an agreement is reached, all notes and other writings produced while a mediation is in session, except the written agreement or memorandum of understanding, shall be destroyed.

2. The parties and one representative may attend mediation sessions. Other persons may attend only with the consent of all parties and the mediator. Non-parties to the claim shall be advised by the mediator regarding confidentiality and are not allowed to participate in the mediation but may confer privately with their sponsoring party. All persons attending a mediation session shall respect and maintain the total confidentiality of the session. Attendance at a mediation session shall be in person, except as otherwise authorized in advance by the assigned trial judge, if any, or by agreement of the parties and the mediator.

3. Evidence of statements made and conduct occurring in a mediation conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation conference.

4. No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation conference in any civil proceeding for any purpose, except for proceedings of the State Bar Association, disciplinary proceedings of any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder care.

5. Statistical information regarding use of mediation in workers’ compensation is subject to public disclosure.

J. Concluding Mediation. During the mediation conference, the parties may agree to resolve a particular issue, settle the entire claim or conclude the mediation without reaching an agreement or settlement. A mediation conference may be concluded by any party at any time, by the mediator if in the mediator’s discretion it is necessary or an impasse exists, or upon an agreement being reached by the parties. All Court ordered mediation conferences must be concluded within thirty (30) days of the mediator being contacted by the parties to make appropriate arrangements for the mediation proceedings. If an agreement is reached, the agreement shall be reduced to writing by the mediator, then read and signed by the parties and their counsel, if any, and the mediator. If the agreement requires a Court order, the order must be presented for approval. The consent to mediate form or the Court order of referral for mediation, as applicable, shall be attached to any final order of the Court. Whether or not the parties reached an

agreement or mediated by mutual agreement or pursuant to Court order, the mediator shall report the results of the mediation as provided in subsection H of this rule.

K. **Fees.** A certified mediator shall be entitled to a fee that does not exceed \$100.00 per hour, or portion thereof, for mediation conferences, not to exceed a total fee of \$800.00 for any mediation conference, even though the conference may recess and reconvene on a subsequent date(s). The mediator shall disclose his or her fee(s) at the time the mediator is selected. If requested, the fee(s) shall be disclosed to the parties during the selection process. With prior approval of the employer and/or the insurance carrier, the mediator may collect a fee in excess of or less than the limits set forth in this subsection. Mediators shall be entitled to reimbursement for mileage and necessary lodging expenses, limited to the provisions of the State Travel Reimbursement Act, 74 O.S. Section 500.1 et. seq. These reimbursements shall be in addition to the fees set forth in this subsection. Nothing in this subsection shall prohibit a mediator from charging a flat fee for a mediation conference, subject to the limits specified in this subsection.

[Adopted effective February 22, 2008.]