

## **Title 20: Labor**

### **Part 1: Rules of the Mississippi Workers' Compensation Commission**

#### **Rule 1.7 Self-Insurers.**

(A) SELF-INSURERS -- GENERAL PROVISIONS. Any employer desiring to qualify as an individual self-insurer, or any group of employers desiring to qualify as a group self-insurer, and carry its own risk under the provisions of Miss. Code Ann. Section 71-3-75 shall make application on a form provided by the Commission, and shall be required to reply fully to all inquiries made thereon.

(1) In no event shall an application for self-insurance be approved unless the applicant is willing and able to furnish adequate security for the payment of its obligations under the Act, and the type and amount of such security shall be determined by the Commission and in no event shall be less than \$100,000.00 unless otherwise ordered by the Commission. Each application will be considered upon its merits with strict regard to the hazards involved and the financial strength of the applicant.

(2) No record or any information concerning the solvency and financial ability of any applicant for self-insurance, or of any approved individual self-insurer or group self-insurer, and no other information which is deemed confidential by other provisions of law, which is acquired by the Commission, shall be subject to public inspection. However, such information shall be made available to the Guaranty Association in the instance of a self-insurer in default pursuant to Miss. Code Ann. Sections 71-3-151 through 71-3-181. In addition, and upon approval by the Commission, such information shall be made available to the Individual Association in the instance of a proceeding or Commission action under paragraphs (3) or (4) of this section involving an individual self-insured.

(3) Upon approval of any application submitted hereunder, the Commission may continually monitor the financial status and claim liabilities of the self-insurer, and may require, at the expense of the self-insurer, periodic financial, actuarial or other such audits, statements or reports as the Commission deems necessary to ensure that the financial status of the self-insurer remains satisfactory, that its liabilities remain adequately funded, and that its obligations under the compensation law are being promptly met. All financial reports requested are required to be submitted electronically. The Commission may require further or additional security from the self-insurer or institute proceedings requiring the self-insurer to show cause why its certificate of authority to act as a self-insurer should not be terminated. The Commission will notify the Individual Association of any such proceedings instituted against an individual self-insurer and of the basis for the Commission's decision to institute the proceedings. The Commission will notify the Group Association of any such proceedings instituted against a group self-insurer and of the basis for the Commission's decision to institute the proceedings.

(4) The security posted or the indemnity bond held by the Commission shall be for the benefit of, as applicable, the Mississippi Workers' Compensation Commission, the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association, or the Mississippi Workers' Compensation Group Self-Insurer Guaranty Association, as security for the payment of the self-insurer's or group self-insurer's covered claims and other obligations under the Law; for the expenses incurred by either Association, as applicable, in evaluating, adjusting, defending, or settling the self-insurer's covered claims; and for any assessment made against the self-insurer pursuant to the Guaranty Association Act, Miss. Code Ann. Sections 71-3-151 through 181. The security posted or the indemnity bond held by the Commission shall also be for the benefit of the Commission to the extent of any assessment made against the self-insurer pursuant to the applicable provisions of the Act. Any bond or other security held by the Commission shall not be returned to a self-insurer or released any earlier than at least one (1) year after the last known claim against such self-insurer has been closed in accordance with the provisions of the Act. Prior to releasing or reducing or increasing by 30% or more any security or bond held in whole or part for the benefit of the Individual Association or the Group Association, the Commission will notify the Individual or Group Association of the Commission's intent to release, reduce, or increase the security or bond.

(5) All self-insurers are required to furnish the Commission safety reports at least annually, according to the schedule or time fixed by the Commission. Such reports are to be made by a safety engineer or some other party competent to make safety surveys and reports, and shall be in the format prescribed by the Commission.

(6) All self-insurers shall file with the Commission a statement of financial condition audited by an independent certified public accountant six months after the end of the self-insurer's fiscal year. At the same time, each individual self-insurer provide the Commission with (i) current point of contact information consisting of its mailing address, e-mail address, telephone number; and (ii) proof of specific and/or aggregate excess insurance that is in a form and in an amount by an insurance company acceptable to the Commission and that names the Individual Association as an additional insured in the event of the self-insurer's insolvency or default. All group self-insurers must also comply with any and all annual reporting requirements set forth in Part B of this Rule.

Additionally, at least every three years, unless relieved by the Commission, or more often if prescribed by the Commission, every individual self-insurer shall file an actuarial report with the Commission from a Member of the American Academy of Actuaries or other Commission approved qualified loss reserve specialist, a statement which shall include, but not be limited to, the amount of actuarially appropriated reserves for (1) known Mississippi claims and expenses associated therewith, and (2) Mississippi claims incurred but not reported and expenses associated therewith, which reserves shall be shown as liabilities. The group self-insurers shall submit these reports annually.

All applications and all renewals of certificates of authority for the privilege of self-insurance are granted upon the express condition that said self-insurers file promptly and completely by the prescribed due date all reports required of them by the Commission and that they comply with the plan of operation of the guaranty association to which they are members, in accordance with Mississippi Code § 71-3-165(3).

(7) All self-insurers shall maintain specific and/or aggregate excess insurance coverage in an approved form providing statutory coverage with retention in an amount set by the Commission. A copy of the renewal policy shall be filed electronically with the Commission within thirty (30) days of the policy inception date.

**(B) GROUP SELF-INSURERS.**

(1) **Authority to Act as a Workers' Compensation Self-Insurance Group.** No person, association or other entity shall act as a workers' compensation self-insurance group unless it has been issued an annual certificate of authority by the Mississippi Workers' Compensation Commission. Such certificate of authority must be renewed annually on or before the anniversary date of the original award of group self-insurance.

**(2) Qualifications for Initial Approval and Continued Authority to Act as a Workers' Compensation Group.**

a. Before a group of employers may file an application to act as a self-insurer, they must demonstrate the need to form such a group to the satisfaction of the Commission. The potential group self-insurer must show cause as to why a new group self-insurer should be approved. This may be through written presentation, oral, or both, at the direction of the Commission. Once the Commission approves the demonstration of need to form a group self-insurer, the proposed self-insurance group shall file with the Commission its application for a certificate of approval accompanied by a non-refundable filing fee in the amount of Five Thousand Dollars (\$5,000.00). The application shall include the group self-insurer's name, location of its principal office, date of organization, name and address of each member, together with the following:

- (i) A copy of the articles of association, if any;
- (ii) A copy of the bylaws of the proposed group self-insurer;
- (iii) A copy of agreements with the administrator and with any and all service companies;
- (iv) A copy of the agreement between the group self-insurer and each member securing the payment of workers' compensation benefits, which shall include provisions for payment of assessments as provided by Law;
- (v) Designation of the initial board of trustees and administrator;

(vi) The address in this State where the books and records of the group self-insurer will be maintained;

(vii) A pro-forma financial statement and any other documents required by the Commission on forms acceptable to the Commission showing the financial ability of the group self-insurer to pay workers' compensation obligations of its members;

(viii) Proof of payment to the group self-insurer by each member of not less than 25% of that member's first year of estimated annual premium as defined by the Commission on a date prescribed;

(ix) Public group self-insurers must submit authorization from the governing authorities of each proposed member allowing participation in such a group self-insurance program with other political subdivisions or state agencies, boards, commissions or other public entities;

(x) Rates, Rating Plans, (including all rating elements and formulas, e.g., experience rating factors, discounts, Schedule Rating Plans, etc.) Premium payment plans and classes of business to be written must be submitted for, and approved by the Commission, prior to a certificate of authority being issued.

b. To maintain its certificate of approval for group self-insurance, the group self-insurer must comply with the following provisions and supply the following items to the Commission:

(i) A combined net worth of all members of at least \$1,000,000.00;

(ii) Each group self-insurer shall submit to the Commission a statement of financial condition audited by an independent certified public accountant, approved by the Commission, six months after the end of the group self-insurer's fiscal year. The financial statement shall include actuarially appropriated reserves for (a) known claims and expenses associated therewith, (b) claims incurred but not reported and expenses associated therewith, (c) unearned premiums and (d) bad debt, which reserves shall be shown as liabilities;

(iii) An actuarial opinion regarding reserves for (a) claims and expenses associated therewith and (b) claims incurred but not reported and expense associated therewith shall be submitted to the Commission included in the audited financial statement;

(iv) Rates, Rating Plans, (including all rating elements and formulas, e.g., experience rating factors, discounts, Schedule Rating Plans, etc.) Premium payment plans and classes of business to be written must be submitted for, and approved by the Commission at least ninety (90) days prior to the renewal date in order for the group self-insurer's certificate of authority to be renewed.

(v) Unless relieved by the Commission, an actuarial rate analysis will be performed annually and presented to the Commission in conjunction with the submission of the items

mentioned in part (b) (iv) above. This analysis will include all classes to be written by the group self-insurer. The actuarial opinions and rate analysis shall be given by a Commission-approved Member of the American Academy of Actuaries or other Commission-approved qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners, or any other qualified entity approved by the Commission.

(vi) Security against all unpaid claims and other liabilities in case of insolvency as prescribed by the Commission which shall be provided by either a surety bond, financial security endorsement, guaranty agreement, or such other security as may be required by the Commission, continued membership and payment into the self-insurance guaranty fund in an amount specified by the Commission, or any combination thereof. The Commission may adjust from time to time the requirements for the amount of security based on differences among group self-insurers in their size, types of employment, years in existence, financial status or other relevant factors;

(vii) Specific and/or aggregate excess insurance in a form and in an amount by an insurance company acceptable to the Commission;

(viii) An indemnity agreement jointly and severally binding the group self-insurer and each member thereof to meet the workers' compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the Commission;

(ix) A fidelity bond for the administrator in a form and amount acceptable to the Commission;

(x) Any changes in bylaws of the approved group self-insurer;

(xi) Any changes in agreement with the administrator and with any and all service companies;

(xii) Any changes in the board of trustees or administrator.

### **(3) Examinations.**

The Commission may examine the affairs, transactions, accounts, records, assets and liabilities of each group self-insurer as often as the Commission deems advisable. The expenses of such examinations shall be assessed against the group self-insurer.

### **(4) Board of Trustees: Membership, Powers, Duties, Prohibition.**

Each group self-insurer shall be operated by a board of trustees which shall consist of not less than five persons whom the members of a group self-insurer elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the group self-insurer. The group self-insurer's administrator, service company or any owner, officer, employee of, or any person affiliated with such administrator or service company shall not serve on the board of trustees of the group self-insurer. All trustees shall be residents of the state of

Mississippi or officers of corporations authorized to do business in the state of Mississippi. The board of trustees of each group self-insurer shall ensure that all claims are paid promptly and shall take all necessary precautions to safeguard the assets of the group self-insurer.

a. The board of trustees shall:

(i) Maintain responsibility for all monies collected or disbursed from the group self-insurer. Unless otherwise required by the Commission at least 70% of the premium as determined by the Commission shall be for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions, including second injury and other loss related funds. The remaining premium shall be for the payment of taxes, general regulatory fees, and assessments, and administrative costs. The Commission may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group self-insurer shows to the Commission's satisfaction that (a) more than 30% is needed for an effective safety and loss control program or (b) the group self-insurer's aggregate excess insurance attaches at less than 70%;

(ii) Maintain minutes of all board meetings and make such minutes available to the Commission;

(iii) Designate an administrator to carry out the policies established by the board of trustees, provide day to day management of the group self-insurer, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator;

(iv) Retain an independent certified public accountant to prepare the statement of financial condition as required by the Commission;

(v) Adopt and be responsible for maintaining an investment policy which will permit no more than 30% of investments in equities, unless otherwise approved by the Commission.

b. The board of trustees shall not:

(i) Extend credit to individual members for payment of a premium except pursuant to payment plans approved by the Commission;

(ii) Borrow any monies from the group self-insurer or in the name of the group self-insurer except in the ordinary course of business, without first advising the Commission of the nature and purpose of the loan and obtaining prior approval from the Commission.

**(5) Group Membership; Termination and Liability.**

a. An employer joining a workers' compensation self-insurance group after the group self-insurer has been issued a certificate of approval shall (1) submit an application for membership to the board of trustees or its administrator and (2) enter into the indemnity agreement required by this Rule. Membership takes effect no earlier than each member's date of

approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

b. Individual members of a group self-insurer shall be subject to cancellation by the group self-insurer pursuant to the by-laws of the group. In addition, individual members may elect to terminate their participation in the group. The group self-insurer shall notify the Commission of the termination or cancellation of a member within ten (10) days and shall maintain coverage of each canceled or terminated member for thirty (30) days after such notice, at the terminating member's expense, unless the group self-insurer is notified sooner that the canceled or terminated member has procured workers' compensation insurance, has become an approved individual self-insurer, or has become a member of another group self-insurer. The Commission may terminate any member of a group self-insurer. Any member that owes undisputed premium or assessment to a group self-insurer will be prohibited from joining any other self-insurance groups or becoming a self-insurer until such debt is paid.

c. The group self-insurer shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who wishes to terminate its membership or is canceled by a group self-insurer remains jointly and severally liable for workers' compensation obligations of the group self-insurer and its members which were incurred during the canceled or terminated member's period of membership.

d. A group self-insurer member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group self-insurer or the member of required workers' compensation benefits and other assessments or liabilities.

e. The insolvency or bankruptcy of a member does not relieve the group self-insurer or any other member of liability for the payment of any workers' compensation benefits or assessments and liabilities incurred during the insolvent or bankrupt member's period of membership.

**(6) Service Companies.**

a. No service company or its employees, officers or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator. No administrator or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a service company. All contracts shall be made available to the Commission upon request.

b. The service contract shall state that unless the Commission approves otherwise the service company shall handle, to their conclusion, all claims and their obligations incurred during the contract period.

**(7) Other Reports.**

a. The Commission may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports (loss runs), and quarterly financial statements.

b. The Commission may also prescribe that information be submitted in a data form to the Commission so that the Commission may prepare its own reports and to satisfy oversight responsibility. In any case, non-cooperation, incomplete or improper submissions may result in hearing for revocation.

**(8) Rates and Reporting of Rates.**

a. Each group member shall be audited at least annually, unless relieved by the Commission, and by an auditor acceptable to the Commission to verify proper classification, experience rating, payroll and rates. A group self-insurer or any member thereof may request a hearing and review by the Commission on any objections to the classifications, experience rating, payroll or rates. The Commission may, in its discretion, convene a hearing for such purpose or consider the request without a formal hearing. If the Commission determines that as a result of an improper classification, a member's premium is insufficient, the Commission may order the group self-insurer to assess that member an amount equal to the deficiency. If the Commission determines that as a result of an improper classification a member's premium is excessive the Commission may order the group self-insurer to refund to the member the excess collected. The Commission may grant such other relief as may be appropriate under the circumstances. The audit shall be at the expense of the group self-insurer.

**(9) Refunds.**

a. Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees with the approval of the Commission.

b. Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any year shall be paid only to those employers who remain participants in the group for the entire fund year for which such refund has been approved. However, payment of a refund based on a premium fund year shall not be contingent on continued membership in the group after that fund year for which such refund has been approved.

**(10) Payment of Premium.**

a. Each group self-insurer shall establish a premium payment plan which is filed with and approved by the Commission.

b. Each group self-insurer shall establish and maintain bad debt reserves based on the historical experience of the group self-insurer or other group self-insurers.



**(11) Deficits and Insolvencies.**

a. If the assets of a group self-insurer are at any time found by the Commission to be insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under the Mississippi Workers' Compensation Act and the provisions herein, it shall immediately levy an assessment upon its members for the amount needed to make up the deficiency.

b. In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from (1) surplus from a fund year other than the current fund year, (2) administrative funds, (3) assessments of the membership, if ordered by the group self-insurer or the Commission, or (4) such alternate method as the Commission may approve or direct. The Commission shall be notified prior to any transfer of surplus funds from one year to another.

c. The Commission may deem a group self-insurer insolvent if:

(i) it fails to make and collect the assessments to overcome Commission recognized deficiencies; or

(ii) it is unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims and assessments owed by it.

The Commission shall levy an assessment upon the members of an insolvent group self-insurer sufficient to discharge all liabilities of the group, including the reasonable cost of liquidation. The Commission may replace the current board of directors and/or administrator of an insolvent group self-insurer if necessary to collect outstanding liabilities and assessments through rehabilitation or liquidation of the fund.

**(12) Revocation and Non-Renewal of Certificate of Authority.**

a. After notice and opportunity for a hearing, the Commission may revoke a group self-insurer's certificate of approval or authority if (1) it is found to be insolvent, (2) fails to pay 9 assessments, fines, or other payments imposed upon it, (3) fails to comply with any of the provisions of the Mississippi Workers' Compensation Act or Rules promulgated thereunder, (4) any certificate of approval that was issued to the group self-insurer was obtained by fraud, (5) there was a material misrepresentation in the application for the certificate of approval, (6) the group self-insurer or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, or employee of a member, or a person otherwise entitled thereto and that may have been entrusted to the group self-insurer or its administrator in its fiduciary capacities, or (7) for other good cause.

b. Non-renewal of the annual certificate of authority shall be at the discretion of the commission and shall not require a hearing.

c. Any group self-insurer which ceases to act as a self-insurer shall remain subject to regulation by the Commission until such time as all claims are paid and an appropriate amount of time, as determined by the Commission, has passed to insure that no additional liability under the Act will be incurred. This Rule applies whether the privilege of self-insurance has been surrendered voluntarily, or has been lost through non-renewal, revocation or other act or occurrence. During this time of continuing regulatory oversight by the Commission, all reports required by the Commission will continue to be submitted by the group self-insurer as will any additional reports required by the Commission. The Commission maintains the ultimate responsibility for regulation throughout said process up to and including the installation of a new group self-insurer if the Commission so warrants, or final dissolution.

**(13) Definitions.**

a. "Administrator" means an individual, partnership or corporation engaged by a workers' compensation group self-insurer's board of trustees to carry out the policies established by the group self-insurer's board of trustees and to provide day to day management of the group self-insurer.

b. "Commission" means the Mississippi Workers' Compensation Commission.

c. "Service Company" means a person or entity which provides services not provided by the administrator, including but not limited to, (1) claims adjustment, (2) safety engineering, (3) compilation of statistics and the preparation of premium, loss and tax reports, (4) preparation of other required self-insurance reports, (5) development of members' assessments and fees, and (6) administration of a claim fund.

This Rule is effective from and after January 15, 2018.

Source: Miss. Code Ann. § 71-3-85.

**Rule 2.12 Attorneys.**

Upon satisfactory evidence of employment, attorneys shall be entitled to all information available to their respective clients, whether claimants or employers. Either party shall likewise be bound by the acts of his respective counsel until a revocation of employment is filed with the Commission.

A fee of not more than \$200.00, or an aggregate of \$200.00 in any one claim shall be considered consultation, and shall not be submitted to the Commission for approval. In all instances where a claimant's attorney's fees in any matter exceed \$200.00, a fee agreed upon by

the attorney and claimant shall be submitted to the Commission for approval per Miss. Code Ann. Section 71-3-63. Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the Commission to approve contracts voluntarily entered into between attorney and client within the limitations set out in Miss. Code Ann. Section 71-3-63.

The Commission will review all attorney's fees in light of the interest of justice and fairness to both attorney and client as required in Miss. Code Ann. Section 71-3-63. In any proposed settlement under Miss. Work. Comp. Rule 2.15, the maximum allowable twenty-five percent (25%) attorney's fee shall be calculated based on the aggregate present day value of settlement proceeds, which includes all indemnity and all future medical benefits, so long as any future medical expenses are fully funded. If the allowable attorney's fee invades the future medical expenses, the attorney may reduce the lien or negotiate a separate attorney fee to be paid by the employer/carrier not to exceed the maximum allowable 25% of the aggregate settlement amount. In any event in which future medical expenses are not fully funded, the settlement shall be presumed not to be in the best interest of the claimant as required by Miss. Code Ann. Section 71-3-29.

If medical benefits are awarded and indemnity benefits have been paid out or claimant no longer has access to indemnity benefits, the parties may agree to a separate reasonable attorney's fee to be paid by the employer/carrier not to exceed the maximum allowable 25% of the aggregate settlement amount. An attorney who is not licensed in good standing to practice law in Mississippi, but who is

a. currently a member in good standing of the bar of another state, the District of Columbia, or other American jurisdiction and

b. who is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state,

may appear as counsel pro hac vice in a claim before the Commission, pursuant to the conditions set forth in the Mississippi Rules of Appellate Procedure (Rule 46).

This Rule shall be in force and effect on and after January 15, 2018.

Source: Miss. Code Ann. § 71-3-85.