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Proposed

State of Kansas

**Department of Labor**

**Notice of Public Hearing on Proposed Administrative Regulations**

November 8, 2018

A public hearing will be conducted on Friday, February 1, 2019 at 2:00 pm in Hearing Room 3 of the Department of Labor Building, 401 SW Topeka Blvd., Topeka, Kansas to consider the adoption of proposed rules and regulations of the Division of Workers Compensation, Department of Labor on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Division of Workers Compensation, 401 SW Topeka Blvd., Suite 2, Topeka, Kansas 66603 or by email to [Jose.Castillo@ks.gov](mailto:Jose.Castillo@ks.gov). All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

An individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Request for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Jose Castillo at (785) 296-4000, ext. 2159 (or TTY 1-800-766-3777). The northwest entrance to the Department of Labor Building is accessible. Handicapped parking is located at the northwest side of the Department of Labor Building.

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be obtained by contacting Jose Castillo at (785) 296-4000 ext. 2159 or [Jose.Castillo@ks.gov](mailto:Jose.Castillo@ks.gov).

Summaries of the proposed regulations and their economic impact follow (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the Department of Labor, other state agencies, state employees, or the general public has been identified.)

**K.A.R 51-9-17.** After November 29, 2018, this regulation will mandate reporting entities to report required data to the Division pursuant to the Kansas EDI Release 3.1 guide, which was revised on July 16, 2018. The purpose of the revision is to leverage the most recent standard to support the Online System for Claims Regulations/Research (OSCAR) data needs and functionality

**Economic Impact:** Approximately 90% of reporting organizations utilize a reporting vendor and thus will not incur a cost in the move from Release 3.0 to Release 3.1. For those organizations that do not use a reporting vendor, those organization will incur a one-time cost to

upgrade their system. That cost depends on various factors: 1) whether a contractor is hired or whether in-house resources are used and 2) the complexity of their system and/or whether they seize on the opportunity to upgrade or add functionality which can create a range of cost from \$2,000 – \$7,000. For organizations that submit 100 claims or less a year, they have the option to use a free web-based application to submit their required data.

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**51-9-17. Release 3 3.1 standards for trading partner profiles; submission of data; first**

**reports of injury.** (a) Each insurer, group-funded workers compensation pool, and self-insured employer shall participate in the electronic data interchange (EDI) program and shall submit to the director a completed EDI trading partner profile at least 30 days before submitting claim information pursuant to the international association of industrial accident boards and commissions' (IAIABC's) release 3 3.1 standards, as provided in K.S.A. 44-557a and amendments thereto. The EDI trading partner profile shall be completed according to the "Kansas EDI release 3 3.1 guide for reporting first (FROI) and subsequent (SROI) reports of injury" as revised on ~~October 16, 2012~~ July 16, 2018 by the Kansas department of labor and hereby adopted by reference. This document shall be referred to as the "Kansas EDI release 3 3.1 guide" in this regulation.

(b) Each insurer, group-funded workers compensation pool, and self-insured employer shall report to the director within five days any changes to information submitted in the EDI trading partner profile.

(c) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, by electronic data interchange shall be submitted according to the Kansas EDI release 3 3.1 guide.

(d) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, and the Kansas EDI release 3 3.1 guide's first report of injury, commonly called "FROI 00," shall be considered the filing of an accident report pursuant to K.S.A. 44-557, and amendments thereto. This information shall not be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto.

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(e) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, and the Kansas EDI release 3 guide shall be considered a medical record to the extent that the information refers to an individual worker's identity. No references in the claim information to an individual worker's identity shall be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto. For purposes of this regulation, the claim number used by an insurance carrier, self-insured employer, or group-funded workers compensation pool to identify an individual worker's claim shall be considered a reference to the individual worker's identity.

(f) On or before the compliance ~~dates~~ date specified in paragraphs ~~(g)(1)-(3)~~ subsection (g), each insurer shall file claim information for all "lost time/indemnity" and "denied" cases through EDI rather than by submitting paper forms. The insurer shall file the electronic form in accordance with the Kansas EDI release 3 3.1 guide.

(g) Each insurer shall comply with on or before the implementation ~~schedule~~ date of November 29, 2018 for reporting electronic FROI or SROI ~~specified in this subsection~~. The insurer's ~~implementation schedule shall be one of three "test to production" periods as specified in paragraphs (g)(1)-(3). Each insurer shall be assigned to the first, second, or third test to production period by the director. Each claim administrator voluntarily submitting claims as EDI filings in production status using the international association of industrial accident boards and commissions' (IAIABC's) release 1 3 national standard shall convert to release 3 3.1 and shall be in production status by the same implementation date as that required for the first group of insurers specified in paragraph (g)(1). Each test to production period shall consist of three calendar months.~~

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~~(1) The compliance date for the first test to production period shall be April 1, 2013. The compliance date for that insurer's implementation schedule shall be June 30, 2013.~~

~~(2) The compliance date for the second test to production period shall be July 1, 2013. The compliance date for that insurer's implementation schedule shall be September 30, 2013.~~

~~(3) The compliance date for the third test to production period shall be October 1, 2013. The compliance date for that insurer's implementation schedule shall be December 31, 2013.~~

(Authorized by K.S.A. 44-573 and K.S.A. 74-717; implementing K.S.A. 2011 2018 Supp. 44-550b, K.S.A. 2018 Supp. 44-557, K.S.A. 2011 2018 Supp. 44-557a, and K.S.A. 74-716; effective Jan. 1, 2004; amended June 17, 2005; amended Feb. 8, 2013; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

Kansas Division of Workers Compensation

Agency

Robert Soria

Agency Contact

785-296-4000 x2169

Contact Phone Number

51-9-17 (perm)

K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

K.A.R. 51-9-17 mandates use of the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3.1 electronic data interchange (EDI) national standard for regulatory reporting of workers compensation claims. The purpose of the revisions is to leverage the most recent standard to support the Online System for Claims Regulation/Research (OSCAR) data needs and functionality. The implementation of the new standard will begin on November 29, 2018.

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

The regulation is not mandated by the federal government. Surrounding states are all members of the IAIABC and utilize the IAIABC's EDI national standard for regulatory reporting of workers compensation claims.

**III. Agency analysis specifically addressing following:**

**A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

The proposed regulation will provide efficient and accurate electronic data collection based on the standard that is industry-created, tested, and controlled through the IAIABC. Using EDI for claims reporting is a long established practice within the division (since 2003) and within the workers compensation community (since 1995). In addition, the division is creating an all-digital, paperless, information system called OSCAR and the new standard will be leveraged to support the new system.

**B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

The division estimates that of the organizations required to file workers' compensation claims, those currently in the EDI

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program and using a vendor (about 90% participating currently in the existing EDI program have a vendor) will incur no change in costs to move to Release 3.1. Insurance carriers and self-insured employers that do not currently use a vendor but do EDI "in-house" will incur a one-time cost to upgrade their systems. The cost depends on various factors e.g. whether to hire a contractor or use in-house resources; complexity of their system and/or seize the opportunity to upgrade or add functionality which can create a range of cost from \$2,000-\$7,000. EDI vendors usually charge medium to large reporting entities about the same amount per year (\$2,000-\$7,000 annually) for reporting services. The division estimates that about 10-20% of the insurance companies and self-insured employers are mostly small-volume reporters that will submit fewer than 75-100 claims annually.

Currently the division hosts a "free" internet-based submission method as an alternative to EDI (data entry required on the vendor's system and the division pays the costs of this service through its contract) and it will also offer this service in the Release 3.1 system at no cost to small-volume reports.

**C. Businesses that would be directly affected by the proposed rule and regulation;**

The organizations that are required to file workers' compensation claims reports to the division include the insurance carriers, third party claim administrators, and the self-insured employers. However, by statute, the employers are named as the primary submitters of claims reports. Industry practice is for those adjusting claims are the organizations that have the required data to report on behalf of the employer in both Kansas and nationwide and insurers provide this service as part of their premium pricing.

**D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

Most of the insurance carriers and third party administrators are licensed in multiple jurisdictions and are submitting Release 3.1 claims EDI reports. This regulation will allow them continue to utilize their existing resources in a more efficient way and will likely generate economy of scales. Because all insurance carriers and third party administrators are already required to use EDI to submit claims reports to Kansas since implementation of the current Release 3 standard, the proposed regulation will only change the version of the EDI standard without making significant and substantive changes to the amount of or content of the data to be reported.

**E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The division hosts a "free" internet-based submission method as an alternative to EDI (data entry required on the vendor's system and the division pays the costs of this service through its contract) and it will also offer this service in the Release 3.1 system at no cost to small-volume reporters.

**F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$40,000 to \$140,000

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An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$40,000 to \$140,000

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Approximately 20 trading partners (10% of 200 total trading partners) do not use a vendor and will incur a one-time cost to migrate from EDI 3.0 to 3.1. That cost can range from \$2,000 to \$7,000 per trading partner. For the 20 trading partners who do not use a vendor and need to upgrade their system, the total one-time cost can range from \$40,000 to \$140,000.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

There is no expected impact on revenues. With respect to expenditures, the Division informed the public entities above about preparing for the transition to Release 3.1 from 3.0. The expected impact of this transition is *de minimis* as it involves minor changes to a small set of data elements, which the stakeholders already collect; this was communicated directly to the above public entities. Moreover, if an unforeseen impact is realized, the above public entities have been offered the option of using the free web interface for filing, which eliminates any potential impact. See III.E. above for further description of the free web interface.

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- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

The division made a formal announcement about our intent to implement EDI Release 3.1 through the IAIABC which alerted members comprised of EDI vendors, insurance carriers and third-party administrators. Several announcements were sent via email by our vendor, Ebix, to our EDI trading partners regarding implementation date, testing procedures and dates, updates to our EDI requirements and implementation guide, EDI Release 3.0 cutoff date and other technical information. Also, the division published updates, key dates and new EDI documentation on the division website.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

N/A

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