

October 21, 2024

Kamerron Slay
Commission Secretary
Idaho Industrial Commission
11321 W. Chinden Blvd
Building #2
Boise, ID 83714

Sent via Email to commissionsecretary@iic.idaho.gov

RE: APCIA Comments on IDAPA 17.01.01 Section 305, Requirements for Maintaining Idaho Workers' Compensation Claims Files – Proposed Changes to Administrative Rules Under the Idaho Worker's Compensation Law

Dear Ms. Slay:

The American Property Casualty Insurance Association (APCIA), representing nearly 40% of Idaho's private workers' compensation insurance market, promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in Idaho, the U.S. and across the globe.

APCIA appreciates the opportunity to submit comments for the Idaho Industrial Commission's (IIC) Zero-Based Regulation (ZBR) rulemaking regarding the proposed changes to administrative rule requirements that companies maintain an Idaho bricks and mortar office presence that is adequately staffed as outlined in [IDAPA 17.01.01 Proposed Final Draft](#), specifically **Section 305. Requirements for Maintaining Idaho Worker's Compensation Claims Files**, beginning on page 12 (redline from current regulation reflected below):

305. REQUIREMENTS FOR MAINTAINING IDAHO WORKER'S COMPENSATION CLAIMS FILES. ~~All insurance carriers, self-insured employers, and licensed adjusters servicing Idaho worker's compensation claims shall comply with the following requirements: (3-23-22)~~

01. Idaho Office. (3-23-22)

a. All insurance carriers, self-insured employers, and licensed adjusters servicing Idaho worker's compensation claims shall maintain an office within the state of Idaho. ~~The offices shall be staffed by adequate personnel to conduct business: (3-23-22)~~

b. The insurance carrier or self-insured employer shall authorize and require a member of its in-state staff or an Idaho licensed resident adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. (3-23-22)

c. As staffing changes occur and, at least annually, the insurance carrier, self-insured employer, or licensed adjuster shall submit to the Commission Secretary the names of those authorized to make

decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) Claims Administrator for each policy of worker's compensation insurance.

The language in IIC's proposed final draft in Section 305, subsection 01.a. addresses vague language on staffing, and APCIA's member companies appreciate that deletion. However, our core concern continues to be a requirement for an office presence that is *not* required by Idaho law.

Idaho Statute §72-305 requires that claim adjusters be physically located in Idaho but does not specify a physical office (emphasis added below):

72-305. CLAIMS SERVICES AND MEDICAL SUPERVISION. Each surety shall provide prompt claims services through its own adjusting offices **or officers located within the state**, or by independent, licensed, resident adjusters.

The surety shall provide medical supervision of cases from its insureds through medical consultants located within the state or near enough to provide prompt and continuous service.

History:

[72-305, added I.C., sec. 72-305, as added by 1971, ch. 124, sec. 3, p. 422.]

While this statute is more than 50 years old and arguably needs updating to reflect common insurance claims practices that are now conducted by internet-based technologies such as email, videoconferencing, and cloud-based services, the proposed changes to IDAPA 17.01.01.305.01 continues to mandate insurers maintain a physical office.

Because the current regulation is inconsistent with statute, a bulletin has been required to clarify the regulation. We again recommend the regulation be clarified to be consistent with statute, thereby eliminating the need for the clarifying bulletin.

In our comment letter dated August 1, 2024, APCIA recommended IDAPA 17.01.01.305.01 be changed to be consistent with the law and in accordance with Governor Brad Little's Executive Order 2020-01: Zero-Based Regulation (ZBR), and we continue to recommend consistency. The IIC's stated goal with ZBR on its website is "In accordance with Governor Brad Little's Executive Order 2020-01: Zero-Based Regulation (ZBR), the Industrial Commission will reduce regulatory burdens by removing costly, ineffective, or outdated regulations."

Mandating a bricks and mortar in-state claims office is costly, ineffective, and outdated and results in additional, unnecessary administrative expenses that are borne by the state's employers in the form of higher insurance premiums. Mandated in-state claims offices are unnecessary with current technology and a growing culture of people telecommuting and working from a home office, which many claims adjusters already do now. Face-to-face contact is seldom needed and when it is insurers can easily accommodate it.

In 2023 APCIA sponsored legislation to remove the bricks and mortar requirement from statute. During the Senate Commerce & Human Resources Committee hearing on February 7, 2023, Senator James Ruchti (D-Pocatello) and Senator Todd Lakey (R-Nampa) - both lawyers - commented that they did not believe that Idaho law requires a staffed office presence in the state. Rather, the law only references the need to have claims adjusters residing in the state. APCIA argues the IIC should streamline and clarify the regulation to be consistent with the law.

ZBR is designed to ensure rules are relevant, not outdated, and reflect what is required in Idaho Code and *do not* exceed the intent of law. Governor Brad Little's [Executive Order No. 2020-01](#) states in part:

Ongoing Review Process for Existing Rules

4. An agency wishing to renew a rule chapter beyond the agency review date must promulgate a new rule in accordance with the provisions of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code:
- a. The agency must perform a retrospective analysis of the rule chapter to determine whether the benefits the rule intended to achieve are being realized, whether those benefits justify the costs of the rule, and whether there are less restrictive alternatives to accomplish the benefits. This analysis should be guided by the legislative intent articulated in the statute or act giving the agency the authority to promulgate the rule.
 - i. DFM shall develop a standardized process for the required retrospective analysis. Any such forms shall be posted on the website of the office of administrative rules coordinator no later than October 1, 2020.
 - ii. Agencies should start the new rulemaking from a zero-base, and not seek to simply reauthorize their existing rule chapter without a critical and comprehensive review. Agencies must use the retrospective analysis to guide which regulations, if any, should be re-promulgated **in order to carry out the legislative intent articulated in the statute or act giving the agency the authority to promulgate the rule.** (emphasis added)

We believe there is no need for Section 305.1.a. Title §72-305 requires claims adjusters to be located in Idaho and to be Idaho residents but does not require insurers to maintain a business office within the state. Since the statute allows for either an office or an individual in the state, while the deletion of the language “fully staffed” is an improvement, the proposed final regulation continues to be inconsistent with the law. We respectfully ask that the IIC ensure the regulation follows the statute.

APCIA’s members thank you for the opportunity to comment and appreciate your thoughtful consideration.

Respectfully,



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