

## IDAPA 17 – INDUSTRIAL COMMISSION

### 17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW

DOCKET NO. 17-0101-2201

#### NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2022.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current I.C. 72-404 requires the Commission to review all settlements in order to be satisfied that settlements are in the best interest of the parties. The current IDAPA 17.01.01.802.b.vii. requires attorneys to identify medical bills which are unpaid at the time of settlement and describe the treatment to be given to such bills from the proceeds of settlement. Resolution of unpaid bills is in the best interest of the claimant. HB 590 repeals the current I.C. 72-404 and replaces it with a new version of the statute which removes Commission responsibility to approve settlements in most cases. Accordingly, the Commission no longer has an interest in requiring claimants to specify how unpaid medical bills will be treated at the time of settlement. Removing this section of IDAPA is consistent with the new provisions of I.C. 72-404.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This temporary rule will confer a benefit to all parties to settlements by conforming the rule to the provisions of the new statute.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fee imposed or increased by this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this temporary rule is eliminating redundant language and to align with implementing HB590.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are not incorporated documents in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kamerron Slay, 208-334-6017 or [kamerron.slay@iic.idaho.gov](mailto:kamerron.slay@iic.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this May 25, 2022.

George Gutierrez  
Director  
Industrial Commission  
11321 W. Chinden Blvd.  
Boise, Idaho 83714  
(208) 334-6000

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 17-0101-2201  
(Only Those Sections With Amendments Are Shown.)**

**802. RULE GOVERNING APPROVAL OF ATTORNEYS FEES.**

- 01. Purpose.** The Industrial Commission promulgates this rule to govern the approval of attorney fees. (3-23-22)
- 02. Charges Presumed Reasonable:** (3-23-22)
- a.** In a case in which no hearing on the merits has been held, twenty-five percent (25%) of Available Funds shall be presumed reasonable; or (3-23-22)
- b.** In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of Available Funds shall be presumed reasonable; or (3-23-22)
- c.** In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. (3-23-22)
- 03. Statement of Charging Lien.** (3-23-22)
- a.** All requests for approval of fees shall be deemed requests for approval of a Charging Lien. (3-23-22)
- b.** An attorney representing a Claimant in a Worker's Compensation matter shall in any proposed LSS, or upon request of the Commission, file with the Commission, and serve the Claimant with a copy of the Fee Agreement, and an affidavit or memorandum containing: (3-23-22)
- i.** The date upon which the attorney became involved in the matter; (3-23-22)
- ii.** Any issues which were undisputed at the time the attorney became involved; (3-23-22)
- iii.** The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; (3-23-22)
- iv.** Disputed issues that arose subsequent to the date the attorney was hired; (3-23-22)
- v.** Counsel's itemization of compensation that constitutes Available Funds; (3-23-22)

vi. Counsel's itemization of costs and calculation of fees; and (3-23-22)

~~vii. Counsel's itemization of medical bills for which Claim was made in the underlying action, but which remain unpaid by employer/surety at the time of LSS, along with counsel's explanation of the treatment to be given such bills/claims following approval of the LSS. (3-23-22)~~

viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the Charging Lien. (3-23-22)

c. Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. (3-23-22)

**04. Procedure if Fees Are Determined Not to Be Reasonable. (3-23-22)**

a. Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Paragraph 802.02.b may constitute grounds for an informal determination that the fee requested is not reasonable. (3-23-22)

b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. (3-23-22)

c. The Commission shall order an employer to release any Available Funds in excess of those subject to the requested Charging Lien and may order payment of fees subject to the Charging Lien which have been determined to be reasonable. (3-23-22)

d. The proponent of a fee which is greater than the percentage of recovery stated in Subsection 802.02 shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a Charging Lien and reasonableness of his or her fee. (3-23-22)

**05. Disclosure Statement.** Upon retention, the attorney shall provide to Claimant a copy of a disclosure statement. No fee may be taken from a Claimant by an attorney on a contingency fee basis unless the Claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the Fee Agreement, so long as it contains the following text: (3-23-22)

a. In worker's compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you. (3-23-22)

b. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Industrial Commission, PO Box 83720, Boise, ID 83720-0041, to resolve the dispute. (3-23-22)