



IDAHO INDUSTRIAL COMMISSION

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DATE: May 4, 2016

TO: ALL WORKERS' COMPENSATION INSURANCE CARRIERS,
THIRD-PARTY ADMINISTRATORS, WORKERS' COMPENSATION
POLICYHOLDERS, AND OTHER INTERESTED PARTIES

FROM: IDAHO INDUSTRIAL COMMISSION

RE: PAYMENT OF BENEFITS UNDER DEDUCTIBLE POLICIES AND
IN-STATE ADJUSTING REQUIREMENTS

The purpose of this memorandum is to remind stakeholders of the requirements of Idaho Workers' Compensation law relating to deductible policies, and to reiterate the in-state adjusting requirements applicable to all sureties.

Idaho Code (IC) § 72-306A, enacted in 1993, allows a deductible contract for workers' compensation policies, subject to approval by the director of the Department of Insurance. The Statute outlines a number of requirements that must be satisfied for a deductible contract to be approved. The Statute requires, *inter alia*, that a surety initially fund all losses and then seek reimbursement for such losses paid, up to the amount of the stated deductible, from the policyholder.

The Industrial Commission has recently discovered instances of self-funding, in which a surety's TPA has been required to request funding from an employer before medical bills and income benefits could be paid. The Commission has also seen instances where employers have made direct payments for medical bills that are incurred on workers' compensation claims, both with and without the knowledge of their insurance carrier.

Therefore, some employers and insurers evidently believe that IC § 72-306A authorizes an employer to make direct payments on claims under the deductible amount. However, the statute does not contemplate direct payment of benefits by employer; payment of benefits must emanate from surety, or from surety *via* its TPA.

Second, the Commission finds it necessary to reiterate that all adjusting decisions must be made by the designated Idaho in-state claims adjuster. All aspects of handling and adjusting workers' compensation claims, including investigation and interviews, must be conducted by an Idaho licensed in-state adjuster or by the surety's in-house, in-state adjuster. In-state adjusters must

have full decision-making authority, including, but not limited to, acceptance or denial of claims, authorization of medical treatment, reserve setting, and payment of income benefits. Employers may not require an adjuster to obtain prior authorization from the employer to resolve issues involving any aspect of the handling of a claim. This activity is prohibited. The adjusting of a claim is exclusively the province of the surety, or its designated in-state TPA.

If you are aware of any direct payments made by an employer for claims, or the employer making or finalizing adjusting decisions, you are advised to immediately notify the employer to cease this practice. Failure to comply with these legal requirements by the employer or insurance carrier may result in violation of IC § 72-301, IC § 72-306A, IC § 72-319 or IDAPA Rule 17.02.10.051.01. Violations may result in a penalty or sanctions as determined by the Idaho Industrial Commission, up to and including withdrawal of authority to write workers' compensation coverage in Idaho, or referred to the Department of Insurance for further action.