

**WSR 21-11-083
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed May 18, 2021, 11:01 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: These final rules allow the department of labor and industries to license third-party administrators managing claims for self-insured employers, penalize third-party administrators for rule violations, and certify claim administrators managing claims for self-insured employers as required by RCW 51.14.170.

Citation of Rules Affected by this Order: New WAC 296-15-520, 296-15-530, 296-15-540, 296-15-550, 296-15-560 and 296-15-570; and amending WAC 296-15-001, 296-15-350, and 296-15-360.

Statutory Authority for Adoption: RCW 51.04.020, 51.32.190; chapter 277, Laws of 2020 (SHB 2409).

Adopted under notice filed as WSR 21-06-087 on March 2, 2021.

Changes Other than Editing from Proposed to Adopted Version: The first sentence of WAC 296-15-550 (2)(g) was updated to: "May provide automatic deposit of benefit checks to workers or their representatives." The deletion of "may" in the proposed language of WSR 21-06-087 was inadvertent and is a minor change to ensure consistent implementation and understanding of the rule.

A final cost-benefit analysis is available by contacting Anume Orukari, MPA, CDMS, P.O. Box 44890, Olympia, WA 98504-4890, phone 360-902-6917, fax 360-902-6977, email Anume.Orukari@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 3, Repealed 0.

Date Adopted: May 18, 2021.

Joel Sacks
Director

OTS-2904.3

AMENDATORY SECTION (Amending WSR 09-01-177, filed 12/23/08, effective 1/23/09)

WAC 296-15-001 Definitions. (1) "Self-insurance electronic data reporting system (SIEDRS)": SIEDRS is a computer system that collects claim data electronically from self-insurers. Effective July 1, 2008,

all self-insurers must send timely and accurate claim data to SIEDRS in the required format.

(2) "Substantially similar":

(a) The text of the department's document has not been altered or deleted; and

(b) The self-insurer's document has the text:

(i) In approximately the same font size;

(ii) With the same emphasis (bolding, italics, underlining, etc.); and

(iii) In approximately the same location on the page as the department's document.

(3) "Third-party administrator (TPA)" (~~(: An entity which contracts to administer workers' compensation claims for a self-insured employer)~~) is a business entity that contracts with one or more self-insured employers to handle self-insured employer's claims under WAC 296-15-350. TPAs who handle Washington claims must be licensed by the department of labor and industries. A business entity that is majority owned by a self-insured employer it contracts to handle claims for will not be considered a TPA of that self-insured employer.

(4) "Claims management entity": All individuals designated by the self-insured employer to administer workers' compensation claims, including self-administered organizations and third-party administrators.

[Statutory Authority: RCW 51.14.110. WSR 09-01-177, § 296-15-001, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 06-06-066, § 296-15-001, filed 2/28/06, effective 4/1/06. Statutory Authority: RCW 51.32.190(6), 51.32.055 (8)(a) and (9)(a). WSR 98-24-121, § 296-15-001, filed 12/2/98, effective 1/2/99.]

AMENDATORY SECTION (Amending WSR 19-01-095, filed 12/18/18, effective 7/1/19)

WAC 296-15-350 Handling of claims. What elements must a self-insurer or third-party administrator (TPA) have in place to ensure appropriate handling of claims? Every self-insurer or TPA must:

(1) Establish procedures for securing the confidentiality of claim information.

(2) Have sufficient numbers of certified claims administrators to ensure uninterrupted administration of claims. In this regard:

(a) (~~There must be at least one certified claims administrator involved in the daily management of the employer's claims.~~

~~(b) If claims are administered in more than one location, there must be at least one certified claims administrator in each location where claims are managed.)~~ Effective July 1, (~~2020, to ensure consistent application and delivery of benefits pursuant to Washington laws~~) 2021, every person making claim decisions (~~outside the state of Washington~~) must be a certified claims administrator (~~and maintain core business office hours for Pacific Standard Time~~) or in the process of getting their certification. For the purposes of this section, every person making claim decisions includes:

(i) Those persons who manage claims directly; and

(ii) Who request to allow or deny claims under WAC 296-15-420;

(iii) Take action on claims under WAC 296-15-425; or

(iv) Close claims under WAC 296-15-450.

~~((e))~~ (b) Excluded from the requirement of ~~((b))~~ (a) of this subsection are those persons who manage operations indirectly in support of claims administrators, such as, human resources, accounting, or executive management.

~~((d))~~ (c) When a new person is hired by the ~~((out-of-state))~~ employer or TPA to make claims decisions, if the new person is not already a certified claims administrator, then the new person, within six months of hire, must begin working toward achievement of certification through a comprehensive goal-oriented curriculum approved by the department to achieve certification within two years. While in process of meeting educational needs, the employer must ensure mentoring is provided by a Washington certified claims administrator ~~((and maintain a minimum of one Washington certified employee at each out-of-state location where claims are managed))~~. Providers of the comprehensive goal-oriented curriculum will conduct regular training courses to allow for a new person in the process of completing the training to successfully manage Washington claims and achieve Washington certification within two years. This will include considering online alternatives, when feasible.

~~((e))~~ (d) When a certified claims administrator leaves the hire of an employer or ~~((third-party administrator, whether in-state or out-of-state))~~ TPA, and this results in an employer or TPA temporarily not meeting the qualifications for a certified claims administrator, the employer may apply for a temporary waiver for up to six months pending hiring of a replacement.

(3) Designate one certified claims administrator as the department's primary contact person for claim issues.

(4) Designate one address for the mailing of all claims-related correspondence. The self-insurer is responsible for forwarding documents to the appropriate location if an employer's claims are managed by more than one organization.

(5) Establish procedures to answer questions and address concerns raised by workers, providers, or the department.

(6) Ensure claims management personnel are informed of new developments in workers' compensation due to changes in statute, case law, rule, or department policy.

(7) Include the department's claim number in all claim-related communications with workers, providers, and the department.

(8) Legibly date stamp or produce an imprint on incoming correspondence, identifying both the date received and the location or entity that received it.

(9) Ensure a means of communicating with all injured workers.

[Statutory Authority: RCW 51.04.020. WSR 19-01-095, § 296-15-350, filed 12/18/18, effective 7/1/19. Statutory Authority: RCW 51.04.020, 51.14.030. WSR 14-02-121, § 296-15-350, filed 1/2/14, effective 2/2/14. Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 06-06-066, § 296-15-350, filed 2/28/06, effective 4/1/06.]

AMENDATORY SECTION (Amending WSR 19-01-095, filed 12/18/18, effective 7/1/19)

WAC 296-15-360 Qualifications of personnel—Certified claims administrators. (1) **What is a certified claims administrator?** An experienced adjudicator who has been certified by the department to meet the requirements of WAC 296-15-350(2).

(2) **How do I become a certified claims administrator for self-insured claims?**

(a) Under the mentorship of a certified claims administrator, have a minimum of ~~((two))~~ one year~~((s))~~ of experience~~((, at least twenty hours per week,))~~ in the administration or oversight of ~~((timeless))~~ claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to your filing of the application to take the "self-insurance claims administrator" test.

(b) Have completed:

(i) A comprehensive goal-oriented curriculum approved by the department and resulting in a worker's compensation professional designation; or

(ii) An approved training program within the department.

(c) Take and pass the department's "self-insurance claims administrator" test. The department will provide annual reports to stakeholders. The department will report the results, identify and consider feasible alternative methods of test delivery, make any recommendations for improvements if appropriate and seek comments from stakeholders.

(i) If you have the requisite experience under (a) of this subsection, you may take the test without completing the training required under (b) (i) or (ii) of this subsection. ~~((If you do not pass the test, then you must wait a minimum of three months to retake the test at a date and time scheduled by the department.))~~ The provision to take the test for certification without completing the requisite training will expire ~~((two years from the effective date of this rule))~~ January 1, 2022.

(ii) If you have already passed the test and are a certified claims administrator, you will maintain your certified claims administrator designation without completing the training required under (b) (i) or (ii) of this subsection, and you will need to fulfill the continuing education credits under subsection (6) of this section.

After passing the test, you are designated a certified claims administrator. This is a lifetime certification, provided that continuing education requirements are met.

(3) **How do I receive approval to take the test?** To be approved to take the "self-insurance claims administrator" test, you must apply using the department's online database ~~((no less than forty-five days prior to the next scheduled test date))~~.

The department will review your application and determine if you meet the minimum requirements to take the test. The department will respond to your application no less than fourteen days prior to the next scheduled test date.

(4) **What happens if I fail the test?** You may retest ~~((six months))~~ after the failed test.

If you are a certified claims administrator and you fail the test, your certification will be terminated until you retest and pass.

(5) What must a department-approved comprehensive goal-oriented curriculum for a worker's compensation professional designation include? The curriculum must include:

(a) All phases of basic, intermediate, and advanced claim validity issues, including injury during the course of employment, occupational exposure and illness or disease, causal relationship of injury or illness, prima facie consideration, and submittal of claims to department;

(b) All phases of basic, intermediate, and advanced medical benefit management, including treatment authorization, surgery approval, aggravation of conditions, segregation of conditions, use of consultations and independent medical examinations (IMEs), and department medical guidelines;

(c) All phases of basic, intermediate, and advanced compensation management, including determining the wage as the basis of compensation, payment of temporary total disability payments, permanent partial disability payments, and loss of earning power compensation; and

(d) All phases of basic, intermediate, and advanced work disability prevention, including worker-centric return to work practices, modified or light duty jobs, other vocational recovery interventions, and medical provider collaboration on return to work, activity prescription forms, and job analyses.

(e) Training must include at least seventy-two credit hours as provided in subsection (6)(b) of this section.

(f) Curriculum submitters must provide their written core curriculum plan to the department with a table of contents listing the courses in the curriculum, and a detailed description of the content for each course. The curriculum advisory committee will review the submitters' proposed curriculum content and advise of any recommended adjustments, and the department will determine and provide notice of approval or denial within ninety days, or extend the time for approval or denial of the plan for another ninety days. The department may request additional materials, and require adjustments in the core curriculum plan prior to approval, as it deems necessary.

A department-approved curriculum must be reapproved every three years.

(6) How does a certified claims administrator maintain their certified status? A certified claims administrator may maintain certified status by earning the required continuing education credits as outlined in this subsection.

(a) You must earn forty-five credits every three years.

Credits earned within five years prior to the effective date of this rule may be carried forward and applied toward meeting the required continuing education credits for three years following the effective date of this rule up to a maximum of forty-five credits.

Credits may be earned in the following areas:

(i) Instruction on relevant workers' compensation subjects that help injured workers heal and return to work, and focus on areas of recovery such as, but not limited to, medical benefit management, payment of compensation, and vocational services;

(ii) Instruction on existing or historical workers' compensation statutes, case law, rule, or departmental policy, which may assist with managing claims, answering questions, and addressing concerns in accordance with WAC 296-15-350(5);

(iii) Instruction on new developments in workers' compensation such as, but not limited to, changes in statute, case law, rule, or

departmental policy, which may assist claims management personnel in remaining current in accordance with WAC 296-15-350(~~(+6)~~) (5); or

(iv) Credits may also be earned in injury prevention and safety, in addition to credits for injury recovery and claims administration, but not to exceed five of the forty-five credits in three years.

The forty-five credits must include any training designated as mandatory by the department. All training must be specific to Washington law, or describe in detail how the training is relevant to administering Washington law. If you fail to earn sufficient continuing education credits, you will be required to retake the written test to maintain your certified status.

(b) Continuing education providers must submit a training plan with a detailed outline of each area of training to the department when courses are offered. The curriculum advisory committee will review the submitters' proposed training plan and advise of any recommended adjustments, and assignment of course credit will be determined by the department as follows: A maximum of one credit per hour of training will be awarded. Credit will be assigned based on 0.5 increments; no credit will be awarded for increments less than 0.5.

(c) Department-approved continuing education courses must be re-approved biannually (every two years).

(d) You must track and report earned credits at the department's online database. You must obtain and retain signed verification of courses attended. Verification of earned credits must be received by the department by the date the certified claims administrator's certification expires. Extensions will not be granted. If your certification lapses, you will not need to complete the comprehensive goal-oriented curriculum if you apply for reinstatement within two years of the lapse, and then take and pass the department's "self-insurance claims administrator" test.

(e) The department may audit the reported credits of any certified claims administrator at random, or "for cause." Falsification of reported credits will result in revocation of the individual's certified claims administrator status, and may result in the department's refusal of future applications to take the self-insurance claims administrator test.

(7) How often must certified claims administrators notify the department of changes to their contact information? Certified claims administrators must notify the department within thirty calendar days of the effective date of a change in mailing address, work location, or name. Changes must be reported using the department's online database.

[Statutory Authority: RCW 51.04.020, WSR 19-01-095, § 296-15-360, filed 12/18/18, effective 7/1/19. Statutory Authority: RCW 51.04.020, 51.14.030, WSR 14-02-121, § 296-15-360, filed 1/2/14, effective 2/2/14; WSR 12-03-088, § 296-15-360, filed 1/17/12, effective 2/17/12. Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 07-17-162, § 296-15-360, filed 8/22/07, effective 10/1/07; WSR 06-06-066, § 296-15-360, filed 2/28/06, effective 4/1/06.]

NEW SECTION

WAC 296-15-520 Self-insured third-party administrator (TPA) licensing requirements. To be licensed as a TPA, a business entity must:

- (1) Be licensed to do business in the state of Washington, as evidenced by holding a business license from the department of revenue;
- (2) Demonstrate to the department's satisfaction that it can meet the requirements for handling claims under WAC 296-15-350 for the self-insured employers it contracts with; and
- (3) Comply with the reporting requirements of these rules in accordance with Title 51 RCW.

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NEW SECTION

WAC 296-15-530 Self-insured third-party administrator (TPA) licensing application requirements. (1) To apply for a TPA license, a business entity must:

- (a) Submit to the department a department-developed application;
 - (b) Provide a list of the self-insured employers in Washington the TPA is under contract to handle claims for;
 - (c) Provide a list of their certified claims administrators; and
 - (d) Provide a list of their claims administrators in the process of obtaining their certification in accordance with WAC 296-15-360.
- (2) Upon receipt of the required information above, the department will respond within thirty calendar days with the status of the TPA's license request.

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NEW SECTION

WAC 296-15-540 Self-insured third-party administrator (TPA) licensing renewal application requirements. (1) A TPA must apply annually to renew its license. To apply, the TPA must:

- (a) Submit a department-developed renewal application to the department;
 - (b) Provide an updated list of the self-insured employers in the state of Washington the TPA handles claims for;
 - (c) Provide an updated list of their certified claims administrators; and
 - (d) Provide an updated list of their claims administrators in the process of obtaining their certification in accordance with WAC 296-15-360.
- (2) The department will review the TPA's license to ensure the submitted materials together with other evidence demonstrates the TPA continues to meet the requirements of WAC 296-15-520 and 296-15-550.
- (3) Provisional status may be added to a TPA's license who fails to renew license as required in accordance with 296-15-570.

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NEW SECTION

WAC 296-15-550 Self-insured third-party administrator (TPA) duties and performance requirements. Every TPA must:

(1) Agree to be responsible for ensuring that claims are managed in accordance with Title 51 RCW, Washington Administrative Codes, L&I policies, L&I medical treatment guidelines, and medical aid fee schedule.

(2) Follow recognized claim processing practices to include:

(a) Promptly respond to inquiries from workers, L&I, ombuds office, and medical providers:

(i) Telephone inquiries within three business days; and

(ii) Written correspondence within fifteen business days, unless otherwise specified.

(b) Provide workers with a current contact name and phone number to address their questions and concerns.

(c) Provide the reason(s) for the examination in the worker's independent medical examination (IME) appointment letter.

(d) Keep and preserve the claim records of the contracting self-insured employer and make available to the department upon request.

(i) If the TPA discontinues managing claims, then the TPA must either transfer all claim records to the employer or a new TPA, whichever applies.

(ii) If the employer defaults, the TPA must ensure preservation of the claim records, and transfer of all open claims to the department within five business days and all closed claims to the department within thirty calendar days of the date of default.

(e) Demonstrate competent claims handling in all areas of the comprehensive core curriculum under WAC 296-15-360(5) as verified by standard department performance-based audits.

(i) Audits may include, but are not limited to, review of timeliness, accuracy, entitlement to benefits, complaint-based audits or issue-based audits.

(ii) Workers or their representatives, providers, or the ombuds, may submit a complaint in writing or electronically.

(f) Promptly remediate any repeat audit deficiencies in accordance with WAC 296-15-560.

(g) May provide automatic deposit of benefit checks to workers or their representatives. The TPA may not electronically reverse the benefit payment deposited in an account, but must instead pursue any payment adjustments as provided in RCW 51.32.240.

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NEW SECTION

WAC 296-15-560 Self-insured third-party administrator (TPA) penalties. (1) A TPA may be penalized under RCW 51.48.080 for deficiencies involving, but not limited to:

(a) Failure to maintain the requirements under WAC 296-15-425, 296-15-520, or 296-15-550. The penalty for the initial violation is five hundred dollars. The department may increase the amount up to one thousand dollars if the violation is a reoccurring problem.

(b) The department will not assess additional penalties under RCW 51.48.017 when a TPA:

(i) Promptly self-assesses;

(ii) Correctly calculates the amount of the penalty;

(iii) Reports to the department; and

(iv) Pays to the worker a penalty not to exceed the greater of one thousand dollars or twenty-five percent upon discovery of the delayed payment, unless the department determines there is a reoccurring issue or establishes additional benefits have been delayed.

(2) A TPA may be directed to obtain training when reoccurring problems are identified. A TPA who refuses to obtain the training for their staff may be penalized when their failure to obtain training results in subsequent rule or statutory violations.

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NEW SECTION

WAC 296-15-570 Self-insured third-party administrator (TPA) license suspension and revocation. A TPA's license may become provisional, suspended, or revoked if:

(1) Demonstrates a continuing practice of failure to maintain requirements or correct deficiencies. The department may consider issuing a directive listing the specific areas of noncompliance and requiring correction within time frames established by the department; and

(2) If the corrections are not made timely, then the department may issue an order of suspension or revocation in accordance with RCW 51.52.050.

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