

AN ACT
RELATING TO INSURANCE; PROVIDING FOR REGULATION OF CONTROLLED
INSURANCE PLANS; AMENDING THE WORKERS' COMPENSATION ACT; PROVIDING
A PENALTY.

H
B
I
C
/
H
B

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2
8
1
P
a
g
e

Section 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986, Chapter 22,
Section 26, as amended) is amended to read:

"52-1-1.1. DEFINITIONS.--As used in Chapter 52, Articles 1 through 6 NMSA
1978:

1

A. "controlled insurance plan" means a plan of insurance coverage
that is established by an owner or principal contractor that requires participation by
contractors or subcontractors who are engaged in the construction project, including
coverage plans that are for a fixed term of coverage on a single construction site;

B. "director" means the director of the workers' compensation
administration;

C. "division" means the workers' compensation administration;

D. "rolling wrap-up or consolidated insurance plan" means coverage
for an ongoing project or series of projects in which the common insurance program
remains in place indefinitely and contracted work is simply added as it occurs under
the control of one owner or principal contractor;

E. "workers' compensation judge" means an individual appointed by
the director to act as a workers' compensation judge in the administration of the
Workers' Compensation Act or the New Mexico Occupational Disease Disablement

Law;

F. "workman" or "workmen" means worker or workers;

Act; and

H. "workmen's compensation administration" or "administration" means the workers' compensation administration administratively attached to the labor department."

Section 2. A new section of the Workers' Compensation Act is enacted to read:

"CONTROLLED INSURANCE PLAN--PENALTY.--

A. An owner or the principal contractor of a construction project may establish and administer a controlled insurance plan, provided the covered project is a construction project, a plant expansion or real property improvements within New Mexico with an aggregate construction value in excess of one hundred fifty million dollars (\$150,000,000) expended within a five-year period. As used in this section, "aggregate construction value" includes design, utilities, site excavation, construction costs of improvements to real property and acquisition of equipment and furnishings but does not include the cost of fees or charges associated with financing the construction project.

B. Rolling wrap-ups are prohibited. Controlled insurance plans covering non-contiguous construction sites are prohibited.

C. The owner shall include in any request for proposals for bids a notice that participation in a controlled insurance plan is a requirement of the bid and shall provide a copy of the specifications of the controlled insurance plan. The specifications shall include a statement of the bidding contractor's or subcontractor's

H
B
I
C
/
H
B

2
8
1
P
a
g
e

2

responsibilities relative to the plan.

D. A dispute regarding which workers' compensation coverage or insurer is responsible shall be resolved by the administration. An administrative or judicial finding shall include appropriate reimbursement of benefit payments and expenses. For disputed cases as described herein, initial benefits shall be provided by the controlled insurance plan until such time as the coverage dispute is resolved.

E. An owner or principal contractor who enters into a contract for a controlled insurance plan shall file a copy of the contract and evidence of compliance with the requirements of this section with the superintendent of insurance and the workers' compensation administration at least thirty days before the date on which the owner is to begin receiving bids or requests for proposals on the project.

F. An owner or principal contractor using a controlled insurance plan shall distribute any project performance-based refunded premium or dividend to each participating contractor and subcontractor on a proportional basis if provided in the construction contract.

G. An owner or principal contractor shall provide for a safety plan for an employee engaged in the construction project when the employee is present at the construction project site. The owner or principal contractor of the construction project shall develop and carry out a health and safety program approved by the workers' compensation administration. The plan shall include a protocol that encourages return to work guidelines pursuant to the Workers' Compensation Act.

H. The owner or principal contractor of a construction project that uses a controlled insurance plan shall:

H
B
I
C
/
H
B
2
8
1
P
a
g
e

3

- (1) establish a method for timely reporting of job-related injuries to the employer, the insured and the administration;
- (2) provide modifier experienced units statistical rating information and any other statistical information required by the superintendent of insurance for all contractors and subcontractors, including losses and payroll, to the appropriate rating service within six months following the end of the annual policy period;
- (3) provide contractors or subcontractors or their representatives with actual and specific payroll audit data generated under the controlled insurance plan, as would be customarily provided to the employer from a non-controlled insurance plan; and
- (4) provide the same access to information on injured employees as would customarily be available to the employer from a non-controlled insurance plan.

I. In addition to any other penalties provided under the law, a person found to have violated any requirement of this section shall be subject to a penalty pursuant to Section 52-1-61 NMSA 1978."

Section 3. Section 52-5-4 NMSA 1978 (being Laws 1986, Chapter 22, Section 30, as amended) is amended to read:

"52-5-4. AUTHORITY TO ADOPT RULES, REGULATIONS AND FEE SCHEDULES.--

A. The director is authorized to adopt reasonable rules and regulations, after notice and public hearing, for effecting the purposes of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law. All

H
B
I
C
/
H
B

2
8
1
P
a
g
e

4

rules and regulations shall be published upon adoption and be made available to the public and, if not inconsistent with law, shall be binding on the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law. All rules and regulations adopted shall be filed in accordance with the State Rules Act.

H
B
I
C
/
H
B

2
8

B. Such rules and regulations shall include provisions for procedures in the nature of conferences or other techniques to dispose of cases informally or to expedite claim adjudication, narrow issues and simplify the methods of proof at hearings.

1
P
a
g
e

5

C. The director shall promulgate and enforce schedules of reimbursement for such nonprofessional services as providing testimony and depositions, the production of records or the completion of medical capacity forms to health care providers as defined in Section 52-4-1 NMSA 1978 as he deems appropriate and necessary in the administration of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

D. The director shall adopt rules for approval and establishment of controlled insurance plans, including performance standards compliance enforcement.

In an advisory role only to participate in the rulemaking process, the director shall provide for the participation of:

- (1) general contractors;
- (2) subcontractors;
- (3) organized labor;
- (4) municipalities;
- (5) counties; and

HBIC/HB 281 (6) business."

Page 6