



Proposed Regulation Agency Background Document

Agency name	Virginia Workers' Compensation Commission
Virginia Administrative Code (VAC) citation	16 VAC 30 - 91
Regulation title	Procedural Regulations for Filing Claims Reports Under the Virginia Workers' Compensation Act
Action title	EDI Claims Reporting
Date this document prepared	April 28, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action repeals 16 VAC 30-90 and promulgates 16 VAC 30-91 to conform the electronic filing method for mandatory reports to the Commission to the industry standard for such reports.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Commission is an independent, non-executive branch agency, governed by three Commissioners elected by the General Assembly. Code § 65.2-200. The Commission is charged with carrying out the provisions of the Virginia Workers' Compensation Act, Code § 65.2-100 et seq. The Commission is authorized to promulgate rules and regulations, and to examine the "books and records" of parties to proceedings relating to compensation. Code § 65.2-201. The Commission is authorized to collect specific accident data, as well as "such other information as may be required by the Commission" concerning injuries, and to regulate this activity. Code § 65.2-900. The Commission is required to notify injured workers of their rights and also to provide reports to other state agencies concerning accidents, Code §§ 65.2-201 & -900. Any voluntary agreements as to compensation, falling outside the dispute resolution authority of the Commission, must be filed with the Commission in the form prescribed by the Commission. Code § 65.2-701. Also, several of the Commission's dispute resolution rules concern data reporting, including rules requiring agreements, denial, and medical reports to be filed with the Commission. 16 VAC 30-50-50.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

Since the adoption of 16 VAC 30-90 in 1996, pertaining to the electronic filing of accident reports with the Commission, technology and data standards have changed significantly. The Commission desires to conform its electronic data collection methods to current industry practice, and provide its customers that are required to submit reports to the Commission pursuant to the Virginia Workers' Compensation Act electronic methods that are simple, efficient, and effective. Accordingly, the Commission proposes adopting 16 VAC 30-91, which seeks to conform its electronic data reporting methods to those of the nationwide workers' compensation community standards-setting organization, the International Association of Industrial Accident Boards and Commissions, or IAIABC.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

This action is related to how organizations report certain data to the Commission. There are no substantive changes to what the law requires to be reported, only to how the reports are transmitted to the Commission. Thus, the substance of the action is this: Effective July 1, 2009 such reports shall be filed electronically with the Commission.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the public and to the Commonwealth is the consistent, efficient and accurate electronic collection of data required by law. In this way the public can better comply with current reporting laws and the Commission can better collect such reports. Of particular importance is the standard being proposed, which is industry-created, tested, and controlled, through the International Board of Industrial Accident Boards and Commissions, or the IAIABC. Most workers' compensation jurisdictions, including the Virginia Workers' Compensation Commission, are members of the IAIABC, in addition to a vast array of private industry carriers, administrators, and workers' compensation vendors.

The primary disadvantage to the public is that the reporting methods currently in operation (primarily paper submission) will be changing, and thus operations accustomed to reporting by hand, on paper, through the mail, will be moving to an electronic system. It is believed that the available alternatives, including web-based submissions available through an internet browser, will over time virtually eliminate any disadvantage this action might cause, and instead provide tremendous value to the public. There is no disadvantage to the Commonwealth other than in its role as an employer subject to workers' compensation reporting requirements.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements applicable to this action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no identified locality particularly affected by this proposed action.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Matthew Bryant, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220, phone 804-367-2253, fax 877-366-5495, and email matthew.bryant@vwc.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Projected cost to the Commission to implement and enforce: \$3,537,772 (from Commission's administrative fund) Projected ongoing annual costs:\$190,000 (from Commission's administrative fund) (the Commission's administrative fund is funded by a workers' compensation premium tax levied annually by the Commission on insurance carriers)</p>
<p>Projected cost of the regulation on localities</p>	<p>Minimal direct impact—most localities member of group insurer organizations, which handle reporting.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Those required to file workers' compensation insurance reports to the Commission—insurance carriers, self-insured/self-administered employers, and reporting entities (known as third-party administrators)</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Any business in Virginia subject to the Workers' Compensation Act, which experiences a workplace injury, is required to file certain reports with the Commission. The impact of this action on these organizations is indirect, as most are insured, and their insurer handles all reporting; those that aren't insured are large self-insured organizations, and most of these use a vendor for reporting obligations. There are approximately 397 such organizations with relevant claims in 2007. Many of these are affiliated organizations, and accounting</p>

	<p>for such affiliations, the number is reduced to 215. It is estimated that only a small portion of these (25) would be independently owned small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The impact would be on organizations that provide reports to the Commission pursuant to these standards, and they could be broken down into two main categories: small-volume filers and large-volume filers. Many large-volume filers use automated systems, and perform these reports in multiple jurisdictions. It is estimated that the impact for these would be one FTE performing two to four weeks of work, spread out over approximately one year. This would range from \$2,300 to \$6,150. Over time, in the near term, this would result in lower operating costs because Virginia currently requires manual processing.</p> <p>For small-volume reporters, which can be considered to file fewer than 100 claims annually, the impact would be approximately \$7.50 per report, or \$750 annually, based on their using a third-party vendor for this service. Small-volume filers could also use the Commission's web-facing portal to make these reports, and this service is without charge to the filer. Regardless, over time operations costs trend lower because of the discontinuance of paper reporting.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Virginia considered continuing to collect reports on paper, but then scanning the paper and indexing the content. Doing so would allow reporters to continue to send paper reports. This is burdensome to the Commission, difficult to perform with accuracy because of the volume of data elements collected, and it is not aligned with the industry EDI reporting methods. It was determined that a system utilizing the industry established standard via EDI, alongside a low-volume alternative via the internet, would result in the least burdensome action, especially on small business.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or

simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Small-volume reporters will be able to use the Commission’s web-facing portal to file required reports at no cost. Timing was carefully considered, and across the industry there are other EDI implementations underway. Currently, they are underway in varying degrees in Florida, Georgia, West Virginia, and Maine, as well as other states. The Commission has analyzed these implementations’ schedules and worked with the IAIABC implementation committee to derive its schedule. The IAIABC standard is six months for an implementation; the Commission published its implementation guide in February 2008 and the final production date is June 30, 2009.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

No comments have been received in response to the NOIRA, which announced the move to electronic claims reporting via IAIABC standards. Questions about the technical requirements to implement have been received and responded to and posted on the Commission’s website. <http://www.vwc.state.va.us/EDI/FAQs.html> and <http://www.vwc.state.va.us/EDI/EDIinitiative.html>. A public meeting was conducted February 25-26, 2008, with over industry 100 participants. Questions and comments were solicited, but no comments relating to the substance of the NOIRA were received; technical questions were received and are posted on the Commission’s website.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
30-90-10	NA	The current section describes the statutory authority for the regulation	This information is provided as a footer to each new proposed section. In general, the authority for this reporting regulation is 65.2-201 and -900
30-90-80	NA		Electronic reporting via EDI and web-based portal. The reports required to be made remain unchanged; only the manner of reporting is changed. Rationale is to collect reports required by the Virginia Workers' Compensation Act in the most efficient and accurate manner possible, in a way that aligns with current industry practice
30-90-20	30-91-10	The current section provides applicable definitions	The proposed section is essentially unchanged from the current section, but provides additional relevant definitions for new terms being used in the proposed section. Three key new definitions are (1) a "claims report," which is the FROI and SROI report used in the industry data standard; (2) "filed electronically" which is either through EDI for through a web-based alternative; and (3) "Implementation Guide," which describes the technical specifications for FROI and SROI reports
30-90-30	30-91-20	Paper reporting of claims data; provides summary data requirements for paper reports; describes procedures for filing "minor injury" reports	Proposed section describes that (1) all reporting of requested claims data must be done "electronically" as of July 1, 2009, either through EDI or a web-based alternative; and (2) that the technical specifications are described annually in the "Implementation Guide." The current and proposed description of "minor injury" reporting is unchanged (except that the report is to be done electronically instead of on paper).
30-90-40	30-91-20	Provides overview of electronic filing of required reports via non-standardized format developed specifically for the Commission	Proposed section provides overview of electronic filing, either through EDI or through web-based alternative, based upon industry data standard FROI and SROI reports.
30-90-50	30-91-20	Provides technical detail of electronic filing of required reports via non-standardized format	Proposed section provides for electronic filing through EDI or through web-based alternative according to detailed technical specifications set forth in the Implementation

		developed specifically for the Commission	Guide, located at the Commission’s website at http://www.vwc.state.va.us/EDI/
30-90-60	30-91-10 & 30-91-20	Provides description of process for providing electronic reporting to the Commission via an alternative format	Proposed section 30-91-20 requires that reports be “filed electronically,” which is defined in proposed section 30-91-10 to be either through EDI or through a web-based alternative.
30-90-70 & 30-90-80	30-91-20	Provides technical detail of electronic filing of required reports via non-standardized format developed specifically for the Commission	Proposed section provides for electronic filing through EDI or through web-based alternative according to detailed technical specifications set forth in the Implementation Guide, located at the Commission’s website at http://www.vwc.state.va.us/EDI/

Background

Electronic Data Interchange, or EDI, is a powerful method allowing organizations to communicate, in a standardized format, mission-critical information. Using EDI within the workers’ compensation community is a long established practice. Deriving a standard submission format is a well founded project at the IAIABC, which is represented by almost every jurisdiction in the United States, as well as most carriers and vendors working within the workers’ compensation industry.

Thirty states across the county currently use an IAIABC data standard for transacting EDI. Four states use a “proprietary” method to some degree; Virginia is one of these four states. Four additional states, including Virginia, are moving to an IAIABC format, bring the total number of states using this standard to thirty-four.

The impact on organizations required to utilize several different formats in engaging in electronic transactions with workers’ compensation jurisdictions is significant. Most insurance carriers and workers’ compensation industry vendors transact business in several jurisdictions, and the extent to which jurisdictions’ reporting requirements are aligned provide for a more efficient and effective way of conducting business. Thus, deriving and using a standard format not only is well accepted within the industry, but is being driven by the industry.

Virginia currently has available for use a “proprietary” EDI format, meaning that basic, fundamental data elements common to every workers’ compensation report, such as employee name and address, employer name and address, policy number, date of injury, etc., result in programming that is unique. Not surprisingly, only a handful—less than 10 out of more than 250 customers—have undertaken to make these changes. The impact on the Commission’s operations from this is significant, meaning that there is no efficient, effective, and accurate way of conducting electronic business with our customers. Additionally, for some time, our customers have been demanding more from the Commission in terms of its capacity to conduct electronic business with them.

Proposal

The Commission proposes 16 VAC 30-91 to effectuate its transition to a standardized EDI transaction format. The proposal is simple: Specified reports, known in the industry as “FROI” and “SROI” reports, must be filed electronically with the Commission. An Implementation Guide, describing the technical format to be used, and explaining the process of bringing customers online, has been issued in draft form, and will be finalized by May 1, 2008. Any changes to the technical format must be published by May 1 of each year thereafter. This Guide covers the current IAIABC reporting standard, as applicable to the Virginia workers’ compensation context.

Impact

Most customers will have little net impact by this action. Although some organizations report “manually” to the Commission, and will be moving to EDI, the standard to be used has wide acceptance across the United States, and thus adding Virginia will fit within their overall approach to reporting. Additionally, Virginia coverage is not unique, but is commonly written. In other words, carriers conducting business here conduct business broadly. Conforming its practices with those broadly accepted across the industry should have minimal net impact on the bulk of the Commission’s reporting customers.

Some customers transact workers’ compensation reporting business only within Virginia, however. The impact of this action on these customers depends on volume—the higher the volume, the lower the net impact, because of the replacement of manual processing with EDI processing. This does require an investment, however, of technical infrastructure. To accommodate this impact, the Commission is providing an internet-based submission method. In this way, those customers unable to reasonably accommodate the impact have a reasonable, effective alternative. This keeps reporting consistent among all filers, regardless of size, but recognizes the potential impact required by an investment. The number of customers about which this is relevant—small volume, Virginia only reporters—is small.

Communications

Communications about these changes has been robust. Apart from the IAIABC, there are three vendors who focus on data reporting. Thus, from the beginning, these organizations have been approached to broadcast these changes. Additionally, all insurance carriers and self-insurers filing reports in Virginia have been contacted through their contact of record at the Commission.

A formal invitation to all customers to attend an information and training event was made for a Richmond-based meeting on February 25-26, 2008. These efforts have met with tremendous success. There were more than 100 attendees at the February 25-26, 2008, event, and there are several large-volume volunteers to test these new systems.

Additionally, on December 24, 2007, a Notice of Intended Regulatory Action was published in the Virginia Register of Regulations, and posted on the Commission’s website.

Timing

The Commission will begin accepting reports in the new EDI format October 1, 2008, and ending June 20, 2009. Ample time for testing and readiness is being supplied, in accordance with IAIABC recommendations.

Affected Regulations

16 VAC 30-90 is being repealed, and 16 VAC 30-91 is being proposed as a replacement. Note that some sections of 16 VAC 30-90 are copied into the proposal; however, the overall effect of amended Chapter 90 was too confusing, hence and repeal of Chapter 90 and proposal of Chapter 91.

Conclusion

In conclusion, EDI is a powerful and industry-tested method of exchanging workers’ compensation data. It assists jurisdictions with fulfilling its legislative data mandates, and assists customers with complying with workers’ compensation reporting laws. It fosters accurate, timely, and efficient reporting, and lowers net costs compared to manual paper processing. This action effectuates in a straightforward manner Virginia’s move to industry-established reporting standards.