



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Allan L. McVey
Insurance Commissioner

RETENTION PLAN FOR CLOSED WORKERS' COMPENSATION COMMISSION CLAIMS FILES

When the Workers' Compensation Commission (WCC) was terminated on December 31, 2005, the Offices of the Insurance Commissioner (OIC) became the custodian of millions of records from the former WCC, including workers' compensation claim files that were administered by the former state monopolistic workers' compensation program. These claim files are generally related to workers' compensation claims made to the former state Workers' Compensation Fund with a date of loss or date of last exposure on or prior to June 30, 2005. Moreover, such claim files are generally exempted from the state's Freedom of Information Act and are deemed confidential pursuant to W.Va. Code §23-1-4. Claimants and interested parties to a claim may obtain information from the OIC's records, but only to the extent necessary for the proper presentation or defense of a claim or other matter. *See* W.Va. Code §23-1-4. Importantly, these closed claim files contain a significant amount of Personally Identifiable Information (PII) and Protected Health Information (PHI), including but not limited to, names, dates of birth, addresses, social security numbers, employers, salaries, payments, and medical records. Most of these claims have been closed for several years and continued storage of these claim files has become increasingly complex.

While closed claim files from the former WCC may be considered state records, the OIC does not believe that claim files which have been closed for ten (10) years or longer are "essential state records," pursuant to W.Va. Code §5A-8-4, deemed worthy of permanent retention. The OIC has submitted to the State Records Administrator, pursuant to W.Va. Code §5A-8-9, schedules proposing the length of time that the OIC's state records, including closed workers' compensation claim files, warrant retention. While state insurance rules require insurers to retain claim files for the year of closure plus five (5) additional calendar years, out of an abundance of caution, the OIC's Retention and Disposal Schedule (RDS), approved by the State Records Administrator as part of the OIC's Records Retention Authorization, sets a retention period of ten (10) years after the date of closure for closed workers' compensation claim files.

In the past, the OIC has not consistently disposed of closed claim files under its approved RDS, especially when said records were stored electronically. However, electronic records are subject to the same requirements as physical records pursuant to the Department of Administration's rule regarding records management and preservation, including retention and disposal policies. Given increasing cybersecurity concerns and the type of information contained in the closed claim files, the OIC has deemed the risk of continued electronic storage of closed claim files beyond the agency's approved RDS to outweigh the benefit of continued retention. Accordingly, the OIC is issuing this notice to alert stakeholders, including claimants, private insurers, self-insured employers, and others, that the OIC intends to begin disposing of claim files from the former WCC when the files have been closed for more than ten (10) years.

The OIC does not intend to dispose of final orders entered by the former WCC, OIC, Board of Review, or the former Office of Judges as those have separate retention requirements under the RDS. Likewise, briefs or other filings made to the Board of Review have separate retention requirements under the RDS.

Issued: August 8, 2024

