

**304.50-135 Procedure upon decrease in fund balance below minimum -- Failure to remedy deficit -- Delinquency proceedings -- Bulk reinsurance.**

- (1) If a workers' compensation self-insured group has a members' fund balance that is less than the minimum amount required by this subtitle of one million dollars (\$1,000,000) and not a negative members' fund balance reported on an annual financial filing or by a report on examination, then within thirty (30) days of the filing or report, the self-insured group shall file with the commissioner a written report that identifies the cause of the decrease in the fund balance, describes a plan for remedying the decrease in the fund balance, and identifies measures to be implemented to avoid similar future decreases in the fund balance. A report filed with the commissioner under this subsection may be approved, disapproved, or modified by the commissioner. A self-insured group may cease operating under a report filed with the commissioner under this subsection after the self-insured group's members' fund balance is one million dollars (\$1,000,000) or greater and the commissioner has approved in writing the lifting of the terms of the report. A report filed with the commissioner under this subsection shall be deemed part of the self-insured group's organizational documents for purposes of KRS 304.50-060.
- (2) A workers' compensation self-insured group shall report any deficiency to the commissioner as soon as it is identified. A deficiency reported on an annual financial filing or by a report on examination shall be deemed a verified deficiency. If a workers' compensation self-insured group has a verified deficiency, the deficit amount shall be made up immediately from the following:
  - (a) Surplus funds from a fund year other than the current fund year after prior notice of the transfer has been given to the commissioner;
  - (b) Implementation of the previously approved assessment plan; or
  - (c) Alternative methods as the commissioner may direct or approve that provide financial security in the form of surety, deposit, letter of credit, guarantee, or other assets or obligation.
- (3) If a workers' compensation self-insured group fails to remedy a deficit as required in subsection (2) of this section, the commissioner shall order the group to do so.
- (4) If a workers' compensation self-insured group fails to remedy a deficit or make the required assessment of its members within thirty (30) days after the commissioner orders the group to do so, the group shall be deemed to be in hazardous financial condition and insolvent, under Subtitle 33 of this chapter, and the commissioner may file a petition for delinquency proceedings, as defined in Subtitle 33 of this chapter, in Franklin Circuit Court.
- (5) The commissioner shall place a workers' compensation self-insured group into delinquency proceedings in accordance with the provisions of Subtitle 33 of this chapter if the workers' compensation self-insured group is in hazardous financial condition, insolvent or about to become insolvent, no longer financially responsible and may reasonably be expected to be unable to meet its obligations to members or prospective members, has failed to remedy a deficiency in a reasonable and timely manner, or any other grounds that are provided in Subtitle 33 of this chapter. A self-

insured group shall be placed in delinquency proceedings as an insurer, pursuant to Subtitle 33 of this chapter.

- (6) The commissioner may approve bulk reinsurance or any other transfer of the book of business if he or she finds that it is in the best interests of the members and their employees.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1645, effective July 15, 2010. -- Created 2005 Ky. Acts ch. 7, sec. 27, effective March 1, 2005.