

40-5403. Rules and regulations; requirements. The commissioner by rules and regulations, shall require that:

(a) Controlled insurance programs shall:

(1) Establish a method for quarterly reporting of the participant's respective claims details and loss information to that participant;

(2) provide that cancellation of any or all of the coverage provided to a participant prior to completion of work on the applicable project, shall require the owner or contractor who establishes a controlled insurance program to either replace the insurance or pay the subcontractor's cost to do so;

(3) not charge enrolled participants who are not the sponsoring participants, a deductible in excess of \$2,500 per occurrence or a per claim assessment by the sponsor;

(4) keep self-insured retentions fully funded or collateralized by the owner or contractor establishing the controlled insurance program. This paragraph shall not apply to deductible programs;

(5) disclose specific requirements for safety or equipment prior to accepting bids from contractors and subcontractors on a construction project; and

(6) allow monetary fines for alleged safety violations to be assessed only by government agencies.

(b) If a controlled insurance program includes general liability coverage for the participants, then:

(1) Coverage for completed operations liability shall not, after substantial completion of a construction project, be canceled, lapse or expire before the limitation on actions has expired as established by subsection (b) of K.S.A. 60-513, and amendments thereto, but in no case greater than 10 years, and if another carrier takes responsibility for completed operations liability coverage, any and all prior completed operation liability carriers will be released from completed operations liability unless specified otherwise in subsequent policies;

(2) general liability coverage shall not be required of project participants except for liabilities not arising on the site or sites of the construction project. Any coverage maintained by the participants shall cover liabilities not arising on the site or sites of the construction project;

(3) the general liability coverage provided to participants shall provide for severability of interest, except with respect to limits of liability, so that participants shall be treated as if separately covered under the policy;

(4) participants shall be given the same shared limits of liability coverage as applies to the sponsoring participant under the controlled insurance program; and

(5) participants shall not be required to waive rights of recovery for claims covered by the controlled insurance program against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program.

(c) If a controlled insurance program includes coverage for the workers compensation liabilities of the participants, then:

(1) Workers compensation coverage shall include all workers compensation for which payroll attributable to the contractual agreement has been reported and the premiums collected covering all services performed incidental to, arising out of or emanating from the construction site or sites and the coming or going to or from the site or sites; and

(2) participants shall not be required to provide employment to a worker who has been injured on the job unless:

(A) The worker's treating health care provider certifies that the worker is fit to perform the participant's work on the job site consistent with the treating physician's limitations; and

(B) the employer has the pre-injury job or modified work available.

Nothing in this subsection or any rules and regulations adopted pursuant to the controlled insurance program act shall affect any rights, remedies or duties under the workers compensation act or any other state or federal employment law.

History: L. 2009, ch. 136, § 3; July 1.