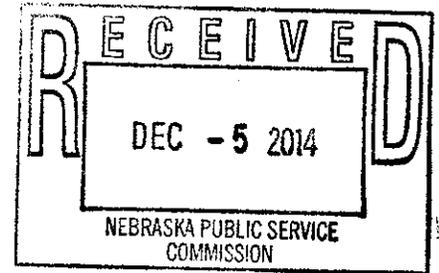


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12/3/14



Mark Breiner, Director, Transportation Department
Nebraska Public Service Commission
300 The Atrium, 1200 N Street
Lincoln, NE 68509

RE: Title 291, Chapter 3, 2014 Proposed Rules and Regulations Changes

Dear Mr. Breiner,

I have reviewed the newest version of the suggested changes to the proposed Rules and Regulations and would like to offer the following suggestions or comments for your consideration.

- 1) 001.01 – Where is “Carrier” defined
- 2) 002.01 - Where is “Regulated motor, common or contract carrier of passengers” defined. Should it be referenced? Should read “...motor carrier, common carrier or...” Carrier by passengers – should it include “for hire”, otherwise someone carrying passengers who is not for hire could be subject to regulation.
- 3) 003.01D - It does not state they have to be on a pre-arranged basis or prohibit “on demand”, so an Open Class vehicle could operate as a taxicab in a community that is already being serviced by a taxicab company.
- 4) 003.01D1 - The actual loaded mile restriction is currently applied to HHS transportation, but should not be applied across the board to all Open Class. Not all Open Class transports are for HHS clients and the provider should not be penalized by the PSC for a private pay no show, especially if considerable driving distance is involved. Even if it is at a reduced rate, the provider should be allowed some way to recoup some of that expense. The cost of gas, payroll, vehicle depreciation etc do not disappear just because the passenger does not show up or changes their mind. **Suggest adding to the beginning of 003.01D1 “With respects Health and Human Services transportation”. Following “transport such passengers” add the following wording “A separate charge for ‘dead head’ miles may be filed by a carrier for when they are NOT transporting for HHS”. (similar to 009.08E)**
- 5) 003.01D1 - “Mileage based charges may not be augmented or enhanced through any calculation that does not reflect actual mileage traveled”. Why does this apply to Open Class only? What about gas surcharges when gas prices spike? What about additional passengers such as chaperones or when a second person is required to help calm or restrain a passenger, *especially when mandated by HHS*? How is “wait time” to be compensated?
- 6) 003.01C – Previously numbered as 010.01C should read 010.01B
003.01D – Previously numbered as 010.01D should read 010.01C
003.01E – Previously numbered as 010.01E should read 010.01A

7) 003.02C – The need and necessity wording is cumbersome and should be rewritten for clarity and intent.

8) **006.02A** – In my opinion, the Nebraska Public Service Commission should not be involved in what should be a collective bargaining or contractual issue. Our statutes already identify what the legislature considered to be adequate Uninsured and Underinsured Motorist limits for the general public. Why is an individual entitled to mandated higher limits just because he/she works for a railroad?

We understand the employee is required to use the appointed railroad crew transportation company while they are still at work and that because it is an “Off Track” incident FELA will not respond. To have their injuries paid they must be able to prove negligence on somebody’s part. Yes there have been instances where a railroad employee has been injured by an uninsured or underinsured motorist but we have never seen any statistics on how many of these accidents have occurred annually or how their numbers compare to the total number of auto related accidents in which railroad employees have been involved or how many resulted in medical bills that were not paid. What is the historical data used to determine why such excessive limits will be mandated? On what factual evidence or proof of need were these limits determined?

Perhaps more importantly, why is a railroad employee worth so much more than the general public? Some of the children managed by the Nebraska Department of Health and Human Services are literally wards of the state. The state arranges for their transportation using regulated carriers. The child has no option as to what carrier will be used for the transportation or when. Their transportation circumstance is nearly identical to the railroad crew member except they are children. Why is a railroad crew member worth so much more than the children of our state?

Nebraska Medicaid client transportation is also controlled by HHS. The state controls when they go, where they go, how they go and who transports them. They are often old, infirm, mentally ill, wheel chair bound or financially embarrassed. They are the most vulnerable and they are the most dependent on the HHS system. Why is the value of this class of Nebraska citizen worth so much less than a railroad employee?

It is our understanding the few transportation providers authorized to transport railroad crews have stand-by agreements with other regulated transportation companies for those times when they just can not have enough vehicles available for the service required. On further investigation we find that taxicab companies and other livery services, whose operational authorities pre-date the PSC requirement for specific authority or permission to transport railroad crews, are being used in a backup or secondary capacity to transport railroad crews when the primary carriers cannot meet the demand, which would mean this higher UM/UIM limit requirement would apply to them as well. We further suspect other taxicab companies or other regulated carriers with vans in their fleet whose PSC authority does not allow them to transport railroad crews are also being used in a secondary capacity. This could typically happen in the less densely populated areas of Nebraska and with regulated carriers who might prefer any income to compliance.

We polled 6 carriers who we know to be active in the taxicab or livery market. As of this time, 3 have responded as follows:

1) Our passenger transportation Insurance program only writes State Statutory UM/UIM limits and contracted service for the transport of Railroad Workers is an excluded exposure and thus makes any operator obligated contractually to such service ineligible for our program.

2) I am sorry but I don't have any markets that would be able to provide those limits. We wouldn't be able to write a risk with that kind of requirement.

3) Our current stance is not to offer UM/UIM limits greater than \$1 Million in NE (NE is not a matching limit state). However, if this requirement became law, I think we could offer \$2M per occurrence UM limits conditioned upon two things:

1) We would also require a \$2M Liability Limit

2) That our reinsurer would be willing to re-insure liability and UM excess of \$1M I do not think it would be a problem for us to do this. I do not have an estimate in cost, but minimum premiums (from reinsurers) being what they are, you are probably looking at an increase of at least \$1000 per unit for single unit risk. The minimums really stop applying after 2-3 units.

It is my understanding contract negotiations have reduced the van size used to transport railroad crews from the larger 12-15 passenger vans to the smaller 7 passenger vans. One of the concerns was for the safety of the passengers. I understand the contract negotiations have also restricted the maximum number of rail crew to be transported in any van at the same time to 4. Negotiations work!

Under the current system and required minimum limits, the following is the potential claim payment sequence for an injury caused by a negligent uninsured or underinsured third party motorist:

1) Any in force insurance coverage on the vehicle owned by the third party.

2) Uninsured Motorists coverage (if the third party has NO in force coverage) from the transportation company's insurance policy

3) Underinsured Motorist coverage (if the third party's own insurance is not sufficient to satisfy the claim) from the transportation company's insurance policy.

4) Uninsured or Underinsured Motorists coverage from the injured railroad workers' own personal insurance policy, assuming he has valid coverage on his own cars. Most personal auto policies include language related to "other insurance" and how they become excess. We would suggest all railroad employees subject to this type transportation carry the highest UM/UIM available to them.

5)

The ultimate decision as to what Uninsured & Underinsured limits should be carried by the transportation company should be negotiated by the parties directly involved. If the unions want higher limits to protect their members, then they should include that requirement in their negotiations with the railroads. If accepted, the railroads should pass that requirement on to the transportation companies. If they agree to provide the higher limits, the transportation companies will secure the coverage and pass the increased cost back to the railroad. The free market system works without the PSC interceding and mandating higher insurance limits for a special interest group.

9) 006.05A – "All liability insurance filings shall be either Form E..." or what? There is no option offered. **The word "either" should be removed.**

10) 006.10 – No verification procedure included. Price is not a consideration. Sometimes the nonadmitted market provides equal or better coverage at a more competitive price than the admitted markets. Is a carrier compelled to pay a higher premium only because there is an admitted market that offered to provide coverage at an excessive cost? **Suggest Deletion of 006.10.**

11) 008.02A3 – Provide for acceptable wording for termination of a lease agreement prior to the original lease agreement termination date.

- 12) 008.02A8 – The leases must be executed “in quadruplicate”. With electronic filings, why do you need 4 copies of anything?. **Suggest an option for a print copy to be retained in the vehicle with electronic copies retained by the certificate holder and the PSC.**
- 13) 009.03 – What about buses equipped with a bathroom? **In a Party Bus the passengers are usually standing and the aisles are seldom if ever clear.**
- 14) 010.02E1 – Should not be deleted. The rule can apply to more than just taxicabs.
- 15) 010.01C1 – “Be competent” how is that defined or determined?
- 16) 010.01C3 – How is this enforced? Carriers do not have a requirement to keep a list of drivers on file with the PSC. What is the penalty for not requesting an exception?
- 17) 010.01E – “All carriers shall maintain...” – **Does this mean taxicab, open class, bus and special party bus in addition to limousines need to maintain trip logs and submit them to the PSC?**
- 18) - 010.01E1 & 010.01 E2 – **should include “or individuals”**
- 19) 010.01E1 – **“Is a special party bus driver or a taxicab driver required to list the names of each paying passenger?”**
- 20) 010.0103 – Why is this removed? If more livery types are be required to submit trip log books, this ability to exempt becomes more important. It can help reduce new additional paperwork overload. Open Class HHS carriers already have a similar requirement just to be paid.
- 21) **010.02D – “Delete the first “fare-paying” entirely. Replace the second “fare-paying” with “first” to be consistent with the wording on the card posted inside the vehicle titled “FOR YOUR PROTECTION”.**
- 22) 010.03 – Inconsistent terms and no real differentiation between an Open Class. Individuals providing service are called “a contractor”, the provider”, “the person”, “a Department provider” and “certificated motor carriers”. **Pick one term to use throughout.**
- 23) 010.03A – Who verifies? What happens when a person gets more than 3 points? How is this enforced?

Please do not hesitate to contact me with any questions, concerns or comments.

Cordially,



Stephen A. Mason
Forsyth Insurance Agency, Inc