

Workers' Compensation Legislative & Regulatory Update

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With the start of 2008 there are a number of changes that will take place in the workers' compensation system including the implementation of a state-wide average 18.4 percent workers' compensation rate decrease. Insurance Commissioner Kevin McCarty signed-off on rate cut late last year, which is the largest one-year decrease in the state's history. The new rates applied to all new and renewal policies as of January 1. Employers will see over \$700 million in total savings. Rates have now been cut by more than half since the passage of the 2003 reforms.

In other news, the Division of Workers' Compensation is moving forward on a number of regulatory issues including several new rules. One rule creates a 30-day window before claims adjusters are fined after submitting a first report of injury to the division. Another rule spells out the process insurers must follow in order to report a health care provider violation. The DWC's Bureau of Compliance has established an electronic payment system for employers that are paying fines due to non-compliance with the law. The DWC has also announced the latest assessment rates to fund the Special Disability Trust

Fund and the Workers' Compensation Administrative Trust Fund. Also taking effect in January is the new maximum workers' compensation rate.

Rates

Employers will start the year by seeing another significant round of rate decreases. McCarty signed-off on the 18.4 percent decrease that was just slightly more than the 16.5 percent rate cut proposed by the National Council on Compensation. The difference between regulators and NCCI focused partially on the profit and contingency factor, with regulators assuming that insurers will receive a higher return on their investments. NCCI noted that the majority of the rate decrease was attributable to the decline in claims' frequency that is both a state and countrywide trend. Between 1991 and 2005, countrywide claims' frequency has dropped by 50 percent including an average change of 6.6 percent over the past two years. Florida's performance has exceeded the country-wide average in many cases. In 1999, the state's claims' frequency was 15.6 percent per million of premium as compared to the 10.9 percent posted last year. Over the past three years, the state's claims' frequency has dropped by 10 percent annually.

While NCCI cautioned that it was an unreasonable assumption that claims' frequency would continue to decline by 10 percent annually, it did result in the council's actuaries to file a proposed indemnity factor of minus six percent. The six percent cut was the lowest ever filed in the state. Despite the good news, there is a measure of concern in some quarters that the rates could become actuarially inadequate, especially due to changes in the economy. Contractors warned that residential construction is expected to decline by roughly 50 percent in 2008, a victim of the burst of the housing bubble. They said this might result in more claims from workers who otherwise would work with lesser injuries due to high wages and overtime pay.

The new rates will apply to all new and renewal policies as of January 1, 2008. Each individual employer's premiums will be based on their class codes, experience modification factor, and any discounts, deductibles, or premium credits. Under state law, employers can receive a five percent premium credit for instituting a drug-free workplace program and/or a two percent credit for implementing a safety program.

Maximum Compensation Rates and Assessments

The Agency for Workforce Innovations has calculated that the statewide maximum weekly worker compensation rate for work-related injuries and illnesses will equal \$746, which is just slightly higher than the \$724 from last year. Under Section 440.12(2), Florida Statutes, the maximum weekly compensation rate for work-related injuries shall be equal to 100 percent of the statewide average weekly wage, rounded off to the nearest dollar. While the compensation rate increased slightly, there is no change to the medical mileage rate that is set at .44.5 cents per mile. In 2007, lawmakers made the first adjustment in the state's rate for mileage reimbursement in a decade by moving it up from .29 cents per mile to its current level. Though not binding on employer/carriers by law, the state's rate has long been an industry standard for paying medical mileage benefits.

The DWC also announced the assessment rates for the Special Disability Trust Fund and the Workers' Compensation Administration Trust Fund. As a matter of law since 1994, the SDTF assessment has been set at 4.52 percent based on carriers' net written workers' comp premiums. The assessment rate covers the fund's obligations for fiscal-year 2007-2008. Since the fund was closed to new claims as of 1997, its liabilities have gone steadily downward. The last actuarial report found the fund's liability to have fallen around \$1.7 billion on an undiscounted basis. In 2007, carriers were assessed a total of \$246 million, with \$244 million being returned to carriers to pay off claims.

The DWC also announced that the assessment rate for the WCATF would be set at .25 percent for 2008. The assessment covers the administrative costs of

the DWC, including the support of the Office of Judges of Compensation Claims. The monies also cover certain programs in the Agency for Health Care Administration, the Department of Education, the Division of Insurance Fraud Worker's Compensation Bureau, and the Department of Business and Professional Regulations. In 2003, carriers paid out \$160 million in assessments, an amount that was cut in half last year to \$83.5 million.

Rule Making

The DWC also is starting the New Year with a number of rules and rule modifications.

The first rule covers the requirements carriers must meet to trigger an AHCA investigation into alleged health care provider violations. Specifically, the draft rule (59A-34 F.A.C.) addresses cases where a carrier finds that a health care provider is systematically overutilizing medical services. The rule spells out the forms carriers must present to AHCA and outlines a variety of deadlines that must be met. The deadlines are as follows:

- Carriers have 365 days to formally file a complaint with AHCA after issuing the first explanation of bill review that identifies a potential violation on behalf of the provider.
- If a carrier doesn't provide the necessary documentation to AHCA it has 10 calendar days to submit the complete information.
- Within 30-days of receiving the complaint, AHCA must inform the health care provider and the carrier that they have received the carrier's report.
- The health care provider then has 30 days to submit a written response to the charges.

The DWC has also released a draft rule addressing the electronic submission of the First Reports of Injury and Illnesses. Under proposed rule 69L-24.9231, if the division finds that a claim's admin-

istrator can submit the documentation electronically, the administrator will not face a penalty if they submit the first report within 30 days of receiving the report. The rule is designed to provide an incentive for claims administrators to use the electronic filing system. In fiscal-year 2006-2007, the division received 205,000 first reports of injury (DWC-1 and DWC-13) in paper form as compared to the 105,000 received electronically. That means 33.9 percent of the forms were submitted through the EDI system. That trend has held up in the first five months of fiscal-year 2007-2008, with 34 percent of the documents being submitted electronically.

The DWC also announced that the adoption of Rule 69L-56 addressing the Electronic Data Interchange Requirements for Proof of Coverage and non-medical claims. The rule requires all insurers to submit certain claims information to the Division electronically, rather than on DWC Forms adopted in Rule 69L-3, F.A.C. The rule also incorporates amendments to the POC EDI filing requirements.

Compliance on Fines

The DWC Bureau of Compliance has set up a new system that will allow employers paying off penalties to make monthly payments to the division online. Starting in 1994, the law allowed the bureau to enter into periodic payment plans when employers are levied fines due to non-compliance with the law. Under rule 69L-6.025, employers can pay penalties in installments of 12, 24, 36, 48, 60 months. Between July 1, 2004 and June 30, 2006, the bureau approved 1,546 payment plans, collecting nearly \$11 million, with another \$30 million due in future years.