

Workers' Compensation Legislative & Regulatory Update

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The long awaited order of the Office of Insurance Regulation (OIR) was entered in regards to the NCCI Florida law only rate filing in response to the Emma Murray v. Mariner Health, Inc. Florida Supreme Court case. In the meantime, the Division of Workers' Compensation continues its review of existing rules and requests for public input have been made. Proposed rules and amendments to rules relate to the EDI Rule 69L-56, Rule 69L-5, Medical Service Rule 69L-7.602 and Workers' Compensation Insurers Standards and Practices Rule 69L-24 billing rule. The Department of Financial Services has secured the services of an actuary to perform the annual actuarial report on the liabilities of the Special Disability Trust Fund.

Rate Increase as a Result of Emma Murray V. Mariner Health, Inc.

On October 23, 2008, the Florida Supreme Court issued its opinion in the case of Emma Murray v. Mariner Health, Inc. and ACE USA, No. SC07-244 (Emma Murray). The court basically concluded that injured workers' attorneys' fees would not be limited to a percentage of recovery of benefits accruing to the injured worker as a result of the intervention of or the filing of a claim by the attorney. Other factors such as time expended in the prosecution of the claim could be considered in establishing a fee. The decision by the court basically overturned earlier legal precedent and the intent of the 2003 amendments to the law that restricted attorneys' fees to a percentage of benefits recovered.

As a result of the Emma Murray opinion, NCCI made a law only filing re-

questing an increase in rates paid by Florida employers for workers' compensation coverage. It was estimated by NCCI that, as a result of the Emma Murray decision, there was justification for an 8.9% increase to the January 1, 2009 premium rate level. NCCI estimated that the full impact of Emma Murray would be an increase in overall workers' compensation system costs of 18.6%. It was anticipated however that the full impact of Emma Murray would not be realized for two years and a request was made for a first year increase of approximately half the full impact or 8.9% in overall system costs. The rate increase was initially requested to begin as of March 1, 2009 applicable to new, renewal and outstanding policies.

On January 26, 2009, the Office of Insurance Regulation issued an order denying the 8.9% increase but allowed for an amended filing for an overall workers' compensation rate level increase of 6.4% applicable only to new and renewal policies effective April 1, 2009. It is noted that this rate increase would not be applicable to outstanding policies. The OIR's order requested

that NCCI amend its filing by February 2, 2009. NCCI can appeal this decision and is currently in the process of reviewing the order and making a decision on how to respond. The earliest that the rate increase could be applicable is April 1, 2009 since pursuant to Section 627.4133, there is a requirement of 45 days advance notice of renewal of premiums.

EDI

The hearing that was tentatively scheduled for January 21, 2009 on the proposed rulemaking by the Division of Workers' Compensation related to EDI Rule 69L-56 was not held since no hearing was requested. The proposed rule amendment addresses electronic proof of coverage filing requirements for employee leasing companies as well as revisions made to EDI forms and EDI implementation manuals.

Self Insurers

Rules relating to self insurers as found in Rule 69L-5 have been completely revised by proposed changes to promote clarity and efficiency to assist self insured employers to comply with their duties and responsibilities associated with being a self insured. The new rules address required filings by self insureds, record maintenance, audit processes, and the application process for and regulations regarding servicing entities. New forms are adopted for use by self insureds. Minimum net worth requirements to qualify for self insured status have been increased and needed guidelines are being proposed for determining the financial strength of current and former self insurers. The proposed new

rules require security deposits for a current and former self insurer to be based on the entity's long term issuer credit ratings. The proposed new rules also outline the penalties for self insurers who late-file reports, fail to file them, fail to maintain loss records, or misclassify losses or other data which impacts the calculation of assessments by the state for retaining self insured status. New rules are being promulgated to change specific excess insurance requirements regarding maximum retention amounts allowed without additional approval. An electronic version of the Unit Statistical Report is also proposed as well as the elimination of the alternative method of application to self insure. A workshop on the new self insured rules is scheduled for Monday, February 16, 2008 at 10:00 a.m. in Tallahassee.

Medical Services Billing

Rule 69L-7.602 is being proposed by the Office of Medical Services of the Division of Workers' Compensation. This rule incorporates the 2009 Medical EDI Implementation Guide. A workshop was held to discuss the rule as proposed and additional amendments are anticipated.

Insurers' Standards and Practices

One workshop has already been held and another anticipated concerning the proposed Workers' Compensation Insurers' Standards and Practices Rule

69L-24. Public input is being requested in the form of written recommendations concerning these new rules. Extensive changes are being proposed concerning the timely payment of benefits to injured workers, reimbursement for medical costs, and timely filing of information with the Division of Workers' Compensation. Penalties are being clarified, audit procedures developed, and extensive new standards for failure to comply are being proposed. Relief is being suggested for those carriers penalized for the "data cleanup" project by the Division relating to penalties assessed in 2008.

Annual Special Disability Trust Fund Actuarial Report

The Department of Financial Services is required by statute to obtain an annual actuarial report on the liabilities of the Special Disability Trust Fund (Fund). The Department of Financial Services has selected Pinnacle Actuarial Resources, Inc. for this purpose. Pinnacle has submitted its report and actuarial analysis as of June 30, 2008. For a copy of this report, contact this newsletter.