Workers' Compensation

Legislative & Regulatory Update

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Insurance Commissioner Kevin McCarty has rejected the National Council on Compensation Insurance's proposed statewide average 7.2% rate cut and ordered the council to submit an amended filing, which would lower rates by an average 13.5%. The rate change marks the third such decrease since the 2003 reforms as employers have seen their overall premiums drop by a cumulative average 32.6 percent. NCCI officials have indicated they are reviewing McCarty's decision. Under the rate order, NCCI has until Nov. 8 to decide whether to appeal the decision or submit an amended filing. The new rates will apply to all new and renewal policies, effective Jan. 1, 2006.

In other regulatory news, the Division of Workers' Compensation announced a new transitional plan to allow carriers, third-party administrators, and self-insured entities more time to comply with certain requirements of the division's medical services, billing, filing, and reporting rule (69-7.062). The rule required insurers and vendors to electronically submit to the division all medical bills or face administrative fines. The rule was initially scheduled to take effect April 1. However, the division deferred the rule's implementation until June 1 to give insurers and vendors more time to develop the technical capability to comply with the regulation. While many insurers have complied with the reporting requirements, some insurers and vendors have found they have a backlog of bills they were unable to submit by the June 1 deadline. Other insurers and vendors that must submit a high volume of bills are still developing the technical capabilities to meet the rule's requirements. The new transition plan will allow those insurers and vendors time to resolve those issues and avoid any administrative penalties.

Rate Filing

McCarty's decision to lower rates by 13.5% marks the third rate decrease since the enactment of the 2003 reforms. The rate decrease is expected to lower employers' premiums next year by a total of $445 million. Previously, McCarty approved a 14% across-the-board rate cut that was based on the perspective savings from the 2003 reforms. The rate decrease applied to all new and renewal policies as of Oct. 1, 2003. McCarty lowered rates a second time when he ordered a statewide overall average 5.1% rate cut that applied to all new and renewal policies as of Jan. 1, 2005.

NCCI's rate filing provided the most comprehensive evidence yet of the impact of the 2003 reforms on system costs. The filing was based on insurers' 2003-2004 loss data, of which 15-months of the 24-month period fell under the new law. NCCI officials, however, cautioned that not all the proposed decrease could be attributable to the reforms. The state is also benefiting from national changes in financial and loss trends such as a continuing reduction in

claims' frequency. However, the state's accident-year combined ratio has dropped from 120% in 2000 to 106% in 2003. NCCI projected that the state's total written premium in 2004 will equal roughly $3.3 billion.

McCarty agreed with NCCI on all the filing's components with the exception of insurers' experience, trend, and benefits. NCCI calculated a loss development factor using a five-year average of insurers' losses, which was consistent with last year's methodology. Based on that five-year average, actuaries set a trend factor of a minus 0.1% for indemnity benefits and plus 1.5% for medical benefits, which produced an experience, trend, and benefit factor of minus 5.8%. OIR actuaries, however, contended that the five-year average did not adequately reflect the impact of the reforms on insurers' expected losses. They said NCCI should have used a two-year average when calculating trend factors. As a result, the OIR approved a trend factor of minus 2% for indemnity and plus 0.5% for medical benefits, which equated with an experience, trend, and benefit factor of minus 12%.

McCarty did approve NCCI's other filing components including the loss adjustment expense factor (minus 0.5%), the production and general expense factor (plus 0.4%), taxes and assessments (minus 1.4%), and a zero percent factor for profit and contingency.

When approved by regulators, individual employers' rates will vary by class code. Additionally, employer's individual premiums will be calculated based on their experience modification factor and any discounts or credits. Under the law, employers can receive a 5% credit for implementing a drug-free workplace and/or 2% credit for having a safe workplace program. Each of the five major industry classifications will see overall rate deductions. Listed below are the projected changes for 2006 and the cumulative changes since 2003.

- Manufacturing – minus 10.6% (cumulative minus 27.1%)
- Contracting – minus 11.3% (cumulative minus 27.7%)
- Office and Clerical – minus 14.4% (cumulative minus 30.2%)
- Goods and Services – minus 14.1% (cumulative minus 30%)
- Miscellaneous – minus 17.1% (cumulative (17.7%)

Medical Billing Rule

The DWC Medical Services Billing, Filing, and Report rule (69L-7.062) is part of the division's Electronic Data Interchange program, which is designed to streamline the reporting of medical bills. Under the rule, the division developed a number of forms to facilitate the reporting of medical bills including the DWC 25 uniform medical treatment form. The other forms (DWC –9, DWC-10, DWC-11) created the guidelines for submitting bills from health care providers, ambulatory surgical centers, drug and medical supplies, and dental services.

The rule was initially scheduled to take effect April 1, but the division deferred the rule's implementation date to give insurers and other vendors more time to develop the technical capability to electronically submit the appropriate forms. The rule took effect on June 1. Since then, however, the division has identified several issues that it is trying to resolve. First, the division found that many insurers were able to send post-June 1 bills on time. However, the insurers had a backlog of pre-June 1 bills, which were not available to send by the June 1 deadline and therefore subject to fines.

Additionally, some insurers that file a high-volume of bills still had not fully developed the technical capability to send all the bills. Another major problem is that under Section 440.185(9), Florida Statutes, the division is required to levy an administrative penalty for every late bill, which is a 100% performance standard.

To resolve these issues, the division has developed a transition plan to assist insurers and other vendors to comply with the rule and avoid any penalties. First, the division found that the 100% performance standard creates an undue hardship. Therefore, they amended the rule to lower the standard to 95%. Additionally, for bills that fall outside the 95% standard, they lowered the per bill penalties to the following:

- One to 15 calendar days late: $10.

- 16 to 30 calendar days late: $20.
- 31 to 45 calendar days late: $30.
- 46 to 60 calendar days late: $40.
- 61 to 75 calendar days late: $50.
- 76 to 90 calendar days late: $100.
- 91 calendar days or more: $500.

Transition Plan

The transition plan has the following provisions:

The 95% reporting requirement will be applied retroactively to June 2005 and all subsequent months. The months of June through Nov. will be considered a transitional period and filing fines will be conditional based on the insurer or other vendor meeting or exceeding the 95% timely filing reporting requirement in Dec. If the insurer or vendor meets the new 95% timely reporting requirement in Dec., then all fines levied between June and Nov., will be waived.

In Dec., if the insurer or vendor does not meet the 95% timely filing requirement, they will be responsible for fines dating back to June under the following terms. Insurers and vendors with filing performances between 90% and 95% will be assessed 50% of all fines due June through Nov, based on the new 95% reporting requirement. Any penalties incurred by the same vendors and insurers in Dec. will be fined the full 100%, based on the fines under the 95% performance level. Insurers with a filing performance below 90% will be assessed 100% of all fines due from June through Dec.

FIC Issues Rule Challenge

The Florida Insurance Council (FIC) is challenging a rule that addresses the coverage status of members of a limited liability company that are not engaged in the construction industry. Rule 69L-6.023 specifically states: (1) "A member of a limited liability company created and approved under Chapter 608, Florida Statutes, that is not engaged in the construction industry is not an "employee" of the limited liability company, for purposes of Chapter 440, Florida Statutes. (2) The liability for compensation imposed by 440.10, Florida Statutes, does not apply as to a member of a limited liability company created and approved under Chapter 608, Florida Statutes, that is not engaged in the construction industry, unless the employer elects a waiver pursuant to Section 440.04, Florida Statutes."

FIC is objecting to the rule on the basis that non-construction members of a limited liability company should be treated the same as non-construction corporate officers. i.e., members of a non-construction LLC should be treated as employees just as corporate officers in non-construction employments, but would be allowed to exempt out of the system similar to the ability of corporate officers to exempt out in such situations.