

Workers' Compensation Legislative & Regulatory Update

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Governor Charlie Crist recently signed into law House Bill 903 relating to the capping of claimants' attorney fee. As a result of this action, the National Council on Compensation Insurance (NCCI) filed (as promised) a rate reduction request as of July 1, 2009, the effective date of the new law. On the administrative front, the Division of Workers' Compensation has scheduled a hearing date, if requested by interested parties, for consideration of the new rules for self insureds. Also, new rules have been proposed by the Division for the discounting of total wages when determining wage loss benefits for injured workers receiving these benefits beginning the 25th month after maximum medical improvement. Finally, new rules have been adopted for Electronic Data Interchange (EDI) related to Professional Employer Organizations (PEOs) or Employee Leasing Companies and new

implementation guides. (Rule 69L-56, F.A.C. effective May 17, 2009)

Attorney Fees

The 2003 systemic changes in the workers' compensation system as enacted by the Florida Legislature made sweeping changes in the then existing law which in part has caused an approximate 65% reduction in the rates that employers pay for workers' compensation coverage in the state of Florida. An important part of the changes in the law related to attempts at controlling attorney fees, arguably a significant cost driver. Attorney fees were limited to a percentage of benefits accruing to the injured worker as a result of an attorney's intervention.

The Supreme Court in the case of Emma Murray v. Mariner Health (Emma Murray) basically determined that attorney fees should not be limited as a percentage of benefits paid to the injured worker but should be quantified

using other criteria including time spent by the attorney in the prosecution of a claim that ultimately resulted in benefits being paid to the worker. House Bill 903, ultimately adopted by the full Legislature, attempted to reinstate the standards established in the 2003 legislation and limited fees as a percentage of benefits recovered. The governor has now signed the bill after much debate and speculation as to his willingness to do so.

The constitutionality of House Bill 903 and in fact the statutory changes made in 2003 relating to attorney fees has yet to be determined by the Florida Supreme Court. It can be expected that a determination will be made based on constitutional considerations and there still remains a question as to whether the attempts at controlling attorney fees will ultimately be successful. There will be another "Emma Murray case" which will discuss the constitutionality of the legislative attempts at controlling

attorney fees which hopefully will finally decide conclusively whether legislative activity in this area of concern is appropriate.

NCCI Rate Filing

During the legislative deliberations on House Bill 903 as above referenced, NCCI indicated that if House Bill 903 passed, a new rate filing would be made in an effort to reduce rates that had been increased as a result of the Emma Murray decision. In fact, that rate filing has been made to reduce rates effective July 1, 2009. (The effective date of House Bill 903.) The rate filing proposes to reinstate the 1/1/09 workers' compensation rates in substitution of the 4/1/09 rates effective 7/1/09. The 4/1/09 rates reflected a first year increase of 6.4% related to the Emma Murray decision. Normal NCCI rate filings will be made in the Fall for rates effective 1/1/10. The normal rate filing is expected to include reference to the unfunded liabilities resulting from the Emma Murray decision from October 1, 2003 to July 1, 2009. An approval circular for the new rates has been posted on NCCI's website. Another circular that provides FAQ's and examples regarding application of the 7/1/09 rates to certain outstanding policies will also be posted.

Self Insured Rules

If requested, a hearing will be held on June 24, 2009 to discuss the newly proposed rules for self insureds. The proposal is a complete re-write of Chapter 69L-5, F.A.C. relating to the duties and obligations associated with the privilege of self-insuring pursuant to Chapter 440, Florida Statutes.

Wage Discounting For Calculating Wage Loss Benefits

The Division has issued Informational Bulletin DFS-01-2009 (Wage Loss Discount Factor Tables) in accordance with Section 440.15(3)(b)8, Florida Statutes (1993). These tables establish criteria for discounting total wages when determining the amount of wage loss benefits due for any week beginning with the 25th month after maximum medical improvement. These tables are to be utilized in determining wage loss benefits. The tables can be located by making reference to the Division's website under Informational Memoranda.

Electronic Data Interchange

Electronic Data Interchange (EDI) Requirements for Proof of Coverage and Claims (Non-Medical) was recently amended to specify insurer requirements for reporting proof of coverage information to the Division to identify a professional employer organization or employee leasing company and its client companies. Additionally, the rule incorporated by reference revised national standard EDI implementation guides for POC (Release 2.1) and Claims (Release 3); updated the Florida POC Implementation Manual containing a new requirement to report Total Payroll and Number of Employees, as well as a new definition for the meaning of "Cancellation/Non-Renewal Effective Date". The rule also clarified that the employer address must not be substituted for the employee address when filing the electronic First Report of Injury or Illness with the Division, and repealed subsection 69L-56.330 Electronic Formats for Reporting the Employee's 8th Day of Disability and the Claim Administrator's Knowledge of 8th Day of Disability (a former Release 1 Claims EDI filing requirement.).

The Final adopted version of Rule 69L-56, F.A.C. was effective May 17, 2009. A copy of the rule text may be obtained from the Division's website.