March 16, 2007

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R.C. 2133

To the Members of the Board

Re: New York Workers Compensation Reform Legislation

On March 13, 2007 Governor Eliot Spitzer signed landmark legislation which fundamentally reforms the New York workers compensation system.

The legislation, which the Governor made a top priority in his new administration, will increase benefits for injured workers for the first time since 1992, while, at the same time, reducing various system costs that are expected to produce overall net system savings.

Some of the major provisions contained in this legislation are summarized below.

- The maximum weekly benefits for injured workers will be increased from $400 to $500, effective July 1, 2007; to $550, effective July 1, 2008; to $600, effective July 1, 2009; and, to 2/3 of the statewide average weekly wage, beginning July 1, 2010. The minimum weekly benefit will also increase from $40 to $100 on July 1, 2007.

- There will be a limitation on the maximum number of weeks of benefits that can be awarded to claimants classified as permanently partially disabled, effective with accidents occurring on or after July 1, 2007. The new maximums will be based on a sliding scale keyed to the claimant’s loss of earnings and will range from 225 weeks where the loss of earning capacity is less than 15%, to a maximum of 525 weeks where the loss of earnings is greater than 95%. There is also a provision that, in the case of extreme financial hardship, a claimant with greater than 80% loss of earnings may apply for permanent total disability status.

- The establishment of return to work incentive programs.

- The establishment of a pharmacy fee schedule and a requirement to use generic drugs when available.

- The establishment of fee schedule for prosthetics and other medically related devices.

- An increase from $500 to $1,000 in the amount above which prior authorization is required for diagnostic and specialty treatment.

- Carriers may contract with organized networks to perform diagnostic tests, x-rays, magnetic resonance imaging and other radiological tests.
A strong emphasis on fighting employer payroll fraud, including significant criminal penalties and the ability to stop work on a job where an employer has failed to purchase workers compensation insurance.

The closure of the Special Disability Fund (second injury fund) to new cases with accidents occurring on or after July 1, 2007. No new claims for reimbursement from the Fund for accidents occurring prior to July 1, 2007 will be accepted by the Fund after July 1, 2010. The bill further provides for bonds to be issued to cover the cost of the remaining unfunded liabilities. The bonds will be financed through assessments against the carriers. The effects of this provision on manual rates and assessments have not been quantified to date, since there are many details that need to be worked out by the affected state agencies.

Requires the payment of permanent partial disability benefit amounts into the Aggregate Trust Fund for any awards made on or after July 1, 2007. The rate of interest for cases paid into the Aggregate Trust Fund will be at the “industry standard rate”, which is to be determined by the Superintendent of Insurance.

Carriers must offer a Section 32 settlement to all claimants who have been classified as permanently disabled.

The role of the New York Compensation Insurance Rating Board, with regard to the manner in which the Rating Board has performed those tasks delegated to it by statute or regulation, including specifically the ratemaking process, is to be examined by the Superintendent of Insurance. His recommendations regarding the Board’s future role are due to be submitted to the Governor no later than September 1, 2007.

The full text of the enacted legislation (Chapter 6 of the Laws of 2007) can be found at http://www.assembly.state.ny.us/leg/?bn=A06163.

The quantifiable rate level effects of this legislation are currently being determined and will be incorporated into the Rating Board’s October 1, 2007 general rate revision.

Rules and regulations regarding the specific requirements of the new law will be forthcoming from the appropriate New York State agencies in accordance with the effective dates of the applicable sections.

Due to the comprehensive nature of this bill and the varying effective dates for some of its provisions, we expect that clarification and other information concerning the provisions of the bill will be forthcoming. As further information becomes available, it will be communicated to you by either the Rating Board or the applicable state agencies.

Very truly yours,

Monte Almer

President