R.C. 2144

To the Members of the Board

Re: New York Workers Compensation
Revised Statistical Plan and Experience Rating Plan
Latent Condition Claims from WTC Operations

The Rates Committee has adopted, and the New York State Insurance Department has approved, revisions to the Statistical Plan and Experience Rating Plan Manual that contain amended verbiage used to describe claims that will emerge as a result of the passage of A.11944.

On August 14, 2006, Governor Pataki signed A. 11944 (Chapter 446 of the Laws of 2006), which extends the time for a claimant to file a workers compensation claim emanating from the rescue, recovery and clean-up work at the World Trade Center (WTC) site between September 11, 2001 and September 12, 2002.

On October 30, 2006, the Rating Board submitted, and the Department approved, a filing that established a unique statistical code (Catastrophe Code 87) for the reporting of these latent condition claims. The filing also incorporated changes to the appropriate pages from the Statistical Plan and Experience Rating Plan to reflect the handling of these claims.

The Rating Board has recently been made aware that, in referring to these unique claims in the manuals, the term “occupational disease” has been incorrectly used to describe the nature of these cases. Occupational disease has its own definition in the Workers’ Compensation Law and the cases referred to in the legislation reflect “latent conditions”, unrelated to the workers’ actual employment, that could emerge as a result of the work performed at the World Trade Center site.

Consequently, the term “occupational disease” is being replaced by the term “latent conditions” in the relevant pages of the New York manuals. A copy of the affected pages, with an issue date of July 27, 2007, is included for your reference.

The manual pages will be distributed as soon as they become available.

Very truly yours,

Monte Almer

President

MH:ab
Encl.
e. Type of Settlement

Report the applicable Type of Settlement associated with each claim.

- Code 00 - Claim not Subject to Settlement
- Code 03 - Section 32 Settlement (carrier/claimant settlement) *
- Code 05 - Non-Compensable
- Code 09 - All Other Settlements

* Note: Code 03 is applicable to both closed claims and to open claims when only a portion of the claim is subject to a Section 32 settlement.

13. Jurisdiction State

Report the two-digit state code of the governing jurisdiction that will administer the claim and whose statutes will apply to the claim adjustment process when that state is not New York.

14. Catastrophe Number

Report the two-digit sequential number for 2 or more claims resulting from the same occurrence. For each policy, the claims from the first such occurrence shall be assigned a Catastrophe Number of 01, claims from the second occurrence shall be 02, etc. When an occurrence results in only one claim being reported, leave this field blank.

EXCEPTIONS:


- ★ b. Report Catastrophe Number 87 for all claims for a latent condition emanating from the rescue, recovery and clean-up operations at the World Trade Center site that were undertaken between September 11, 2001 and September 12, 2002, as defined in Article 8-A of the New York Workers’ Compensation Law (Chapter 446 of the Laws of 2006).

Note: Catastrophe Numbers 48 and 87 will apply to both single and multiple claims.

15. Managed Care Organization Type

Report the two-digit code that corresponds to the type of organization which administers the applicable medical loss on the claim.

- Code 00 - Not Administered by an approved Managed Care Organization
- Code 01 - Administered by an approved Managed Care Organization
- Code 03 - Administered by an approved Preferred Provider Organization

16. Injury Description Code

Report the 3 two-digit codes that represent the Part of Body, Nature of Injury and Cause of Injury for each claim. Refer to Part VIII for the applicable codes.

17. Fraudulent Claim Code

Report the two-digit code that identifies the involvement of fraud in the claim. Specific fraudulent claim coding instructions are located in Part 5.i of this part of the Plan.

- Code 00 - The claim does not involve fraud
- Code 01 - Partially Fraudulent: a portion of the claim has been deemed fraudulent by the courts or ruling of the Workers’ Compensation Board
- Code 02 - Fully Fraudulent: the entire claim has been found to be fraudulent by the courts or ruling of the Workers’ Compensation Board

18. Totals

Report the arithmetic totals of the amounts reported for Number of Claims, Incurred Indemnity, Incurred Medical, Paid Indemnity, Paid Medical, ALAE Paid and ALAE Incurred.

In the case of corrections and subsequent reports, the totals shown must be the revised totals.

For multi-page reports, report the totals on the last card only.
2. **Experience**  
The experience used to calculate a risk’s modification is comprised of the payroll and losses that are reported according to the Statistical Plan. For purposes of this Manual, payroll and losses may also be referred to as data. The experience used to calculate a modification is determined by Rule 2-E.

3. **Payroll**  
The audited payroll or other exposures for each classification in the experience period are those reported according to the Statistical Plan.

4. **Losses**  
Losses as used in this Plan, are incurred losses which are defined as loss payments plus reserves for future payments as of the valuation date. Incurred losses for each classification in the experience period are those reported according to the Statistical Plan.

   a. No loss is excluded from the experience of a risk even if the employer was not responsible for the accident that caused such loss.

   **Exceptions:**
   i) Losses reported with Catastrophe Number 48 are excluded from experience rating calculations. Catastrophe Number 48 claims include all workers compensation claims directly attributable to the September 11, 2001 terrorists attacks with accident dates of September 11 through September 14, 2001.

   ii) Losses reported with Catastrophe Number 87 are excluded from experience rating calculations. Catastrophe Number 87 claims include all latent condition claims emanating from the rescue, recovery and clean-up operations at the World Trade Center that were undertaken between September 11, 2001 and September 12, 2002.

   iii) A loss is not to be included in the experience of a risk if it is not required to be reported to the New York Workers’ Compensation Board as defined in Section 110 of the New York Workers’ Compensation Law provided that the employer pays the claim in the first instance or reimburses the carrier for the treatment rendered to the employee.

   **Note:** An employer is not required to file a claim notice with the Workers’ Compensation Board if the accident or illness requires ordinary first aid or causes loss of time from work of only one day beyond the working day or shift on which the accident or illness occurred.

   b. Loss amounts may be limited in the experience rating calculation. For application of a loss limitation, refer to Rule 2-C-13.

5. **Entity**  
An entity is an individual, partnership, corporation, unincorporated association, fiduciary, or other legal entity.

6. **Risk**  
A risk is all entities eligible for combination under this Plan, regardless of whether insurance is provided by one or more policies or insurance carriers. A risk may be:
   a. A single entity, or
   b. Two or more entities that qualify for combination according to Rule 3-D.

7. **Subject Premium**  
Subject premium is reported according to the Statistical Plan. For experience rating purposes, subject premium, developed for an individual risk during its experience period, is used to determine a risk’s eligibility in accordance with Rule 2-A.

* Effective August 14, 2006 to comply with the provisions of A.11944 (Chapter 446 of the Laws of 2006)