January 31, 2008

Contact: Martin G. Heagen, VP & Actuary
Ext. 117, mheagen@nycirb.org

R.C. 2160

To the Members of the Board

Re: New York Workers Compensation
Enactment of Legislation

On January 31, 2008, Governor Eliott Spitzer signed into law Legislative Bill A9817/S6798 that, among other things, allows for the exchange of workers compensation data between insurers and rate service organizations, establishes a new method for setting workers compensation rates in New York in which a rate service organization will file loss costs, in lieu of final manual rates, and sets forth specific governance requirements with respect to rate service organizations for workers compensation.

As a result of this legislation, please be advised that the Rating Board will be continuing to perform its customary data collection and related responsibilities, as well as providing its various services to the membership and to the industry, as it has for the past ninety-three years.

With respect to loss costs, the Rating Board has been working with the Insurance Department to ensure that the transition to a loss cost basis for workers compensation rates will be both an efficient and timely process. When the Department issues its loss cost regulations, you will be appropriately advised.

A copy of the full text of the legislation is attached for your information and reference.

Very truly yours,

Monte Almer
President
AN ACT to amend the workers’ compensation law, the insurance law, the volunteer ambulance workers’ benefit law and the volunteer firefighters’ benefit law, in relation to rates for workers’ compensation insurance and setting forth conditions for a workers’ compensation rate service organization; to repeal certain provisions of the insurance law relating to the workers’ compensation rating board; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 21 of section 2 of the workers’ compensation law, as added by chapter 6 of the laws of 2007, is amended to read as follows:

21. The "workers’ compensation rating board" or the "New York workers’ compensation rating board" shall mean the compensation insurance rating board until February first, two thousand eight, and thereafter {such entity as is designated by law} THE SUPERINTENDENT OF INSURANCE OR OTHER ENTITY DESIGNATED BY THE SUPERINTENDENT OF INSURANCE FOR COLLECTION AND ANALYSIS OF DATA OR SUCH OTHER PURPOSES AS SET FORTH IN THIS CHAPTER.

Section 2. Paragraph 54 of subsection (a) of section 107 of the insurance law is REPEALED.

Section 3. Subsection (g) of section 2304 of the insurance law is relettered subsection (i) and two new subsections (g) and (h) are added to read as follows:

(G) "LOSS COSTS," FOR THE PURPOSE OF WORKERS' COMPENSATION INSURANCE IN THIS ARTICLE, MEANS THAT PORTION OF A RATE INTENDED TO REPRESENT THE ANTICIPATED COSTS OF CLAIM PAYMENTS AND LOSS ADJUSTMENT EXPENSES ASSOCIATED WITH SUCH CLAIM PAYMENTS, AND MAY INCLUDE ONE OR MORE TREND FACTORS. LOSS COSTS DO NOT INCLUDE PROVISIONS FOR EXPENSES (OTHER THAN LOSS ADJUSTMENT EXPENSES) SUCH AS ACQUISITION COSTS, OVERHEAD AND TAXES, OR PROFIT. FOR ALL OTHER PURPOSES, THE SUPERINTENDENT, EXCEPT AS OTHER-
Wise provided in this chapter, may promulgate regulations defining loss costs.

(H) A loss cost filing shall be deemed to be a rate filing under this article.

S 4. Subdivision 15 of section 3 of the volunteer ambulance workers' benefit law, as added by chapter 6 of the laws of 2007, is amended to read as follows:

15. The "workers' compensation rating board" or the "New York workers' compensation rating board" shall (mean the compensation insurance rating board until February first, two thousand eight, and thereafter such entity as is designated by law) have the meaning set forth in section two of the workers' compensation law.

S 5. Subdivision 17 of section 3 of the volunteer firefighters' benefit law, as added by chapter 6 of the laws of 2007, is amended to read as follows:

17. The "workers' compensation rating board" or the "New York workers' compensation rating board" shall (mean the compensation insurance rating board until February first, two thousand eight, and thereafter such entity as is designated by law) have the meaning set forth in section two of the workers' compensation law.

S 6. Paragraph 2 of subsection (e) of section 2304 of the insurance law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

(2) The base rates loss costs applicable to employments classified under sections two hundred twenty, two hundred forty and two hundred forty-one of the labor law, provided such employments are classified under each of said sections, shall be adjusted (by the New York workers' compensation rating board beginning October first, nineteen hundred ninety-nine) to reflect the payroll limitations required by this section as they separately affect such rates for work actually performed within each of the following geographic territories:

(A) Territory 1 comprising the counties of the Bronx, Kings, New York, Queens, and Richmond;
(B) Territory 2 comprising the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester; and
(C) Territory 3 comprising all other counties within the state.

S 7. Subsection (e) of section 2305 of the insurance law, as amended by chapter 924 of the laws of 1990, is amended to read as follows:

(e) The superintendent: (1) by regulation may, in lieu of the waiting period set forth in subsection (b) (hereof) of this section, require workers' compensation insurance rate filings to be specifically approved before they become effective; and (2) may hold a public hearing whenever deemed appropriate by the superintendent concerning any rate filing made by the rate service organization for workers' compensation insurance, provided that a public hearing shall be held in connection with the filing to be effective, upon the superintendent's approval, July first, nineteen hundred ninety-one) shall hold a public hearing if a rate service organization makes a loss cost filing for workers' compensation that is an increase of seven percent or more over the approved loss costs from the prior year. Until June second, two thousand thirteen, a rate service organization for workers' compensation shall make a loss cost filing every year on or before June first, or such earlier date as is set by the superintendent.
S 8. Subsection (h) of section 2305 of the insurance law is REPEALED.

S 9. Subsection (s) of section 2313 of the insurance law, as added by chapter 6 of the laws of 2007, is amended to read as follows:

A. 9817                             3

(s) Notwithstanding any other provision of this article, no rate service organization may file rates{, rating plans or other statistical information} for workers' compensation insurance after February first, two thousand eight, BUT A RATE SERVICE ORGANIZATION MAY FILE LOSS COSTS OR OTHER STATISTICAL INFORMATION, INCLUDING RATING PLANS, UNTIL JUNE SECOND, TWO THOUSAND THIRTEEN. Notwithstanding subsection (j) of this section, any such rate service organization shall nonetheless be required to be licensed pursuant to this section.

S 10. Section 2313 of the insurance law is amended by adding a new subsection (t) to read as follows:

(T)(1) THE GOVERNING BODY OF A WORKERS' COMPENSATION RATE SERVICE ORGANIZATION SHALL BE COMPRISED OF NINE VOTING MEMBERS. FOUR MEMBERS SHALL REPRESENT INSURERS AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE, AND SHALL BE SELECTED IN SUCH MANNER AS IS DETERMINED BY THE MEMBERS OF THE RATE SERVICE ORGANIZATION. ONE MEMBER OF THE GOVERNING BODY SHALL BE A REPRESENTATIVE OF THE STATE INSURANCE FUND. THE REMAINING FOUR MEMBERS OF THE GOVERNING BODY SHALL SERVE FOR TERMS OF TWO YEARS AND SHALL NOT BE EMPLOYED BY, OR SERVE AS OFFICERS OR DIRECTORS OF, INSURERS AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE, OR ANY PARENT, SUBSIDIARY, OR AFFILIATE THEREOF. ONE SUCH MEMBER OF THE GOVERNING BODY SHALL BE APPOINTED BY THE SUPERINTENDENT. THE OTHER THREE SUCH MEMBERS SHALL BE APPOINTED SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT BY THE FOLLOWING: (I) THE WORKERS' COMPENSATION BOARD; (II) THE BUSINESS COUNCIL OF NEW YORK STATE, INC.; AND (III) THE AMERICAN FEDERATION OF LABOR - CONGRESS OF INDUSTRIAL ORGANIZATIONS OF NEW YORK STATE. ANY VACANCY ON THE GOVERNING BODY SHALL BE FILLED IN THE SAME MANNER AS THE INITIAL APPOINTMENT. THE GOVERNING BODY SHALL SELECT A CHIEF EXECUTIVE OFFICER WHO SHALL SERVE AT THE PLEASURE OF THE GOVERNING BODY AND WHOSE TERMS AND CONDITIONS OF EMPLOYMENT SHALL BE APPROVED BY THE GOVERNING BODY. NO RESTRICTION IN THIS SUBSECTION SHALL APPLY IF COMPLIANCE IS PREVENTED BY THE FAILURE OF ANY APPOINTING AUTHORITY TO MAKE AN APPOINTMENT, OR OF THE SUPERINTENDENT TO APPROVE SUCH APPOINTMENT.

(2) THE GOVERNING BODY OF A WORKERS' COMPENSATION RATE SERVICE ORGANIZATION SHALL HAVE CHARGE OF THE GENERAL ACTIVITIES OF THE ORGANIZATION, INCLUDING CONTROL AND SUPERVISION OVER ITS FINANCES AND AUTHORITY TO ESTABLISH BUDGETS, APPROVE ASSESSMENTS AND IMPOSE FINES ON MEMBERS OF THE RATE SERVICE ORGANIZATION.


(4) A WORKERS' COMPENSATION RATE SERVICE ORGANIZATION SHALL HAVE AN ACTUARIAL COMMITTEE. IT SHALL BE THE RESPONSIBILITY OF THE ACTUARIAL COMMITTEE TO REVIEW METHODOLOGY AND DATA COLLECTION PROCESSES USED TO

THE GOVERNING BODY OF A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION SHALL SELECT A CHIEF ACTUARY OF THE ACTUARIAL COMMITTEE, WHO SHALL SERVE AT THE PLEASURE OF THE GOVERNING BODY AND WHOSE TERMS AND CONDITIONS OF EMPLOYMENT SHALL BE APPROVED BY THE GOVERNING BODY.

(5) A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION SHALL ASSESS INSURERS THAT WRITE WORKERS` COMPENSATION COVERAGE IN NEW YORK STATE FOR EXPENSES IT INCURS IN ITS OPERATION. NOTHING IN THIS PARAGRAPH SHALL PREVENT A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION FROM ALSO OBTAINING FUNDS FROM ANY OTHER SOURCE.

(6) A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION SHALL RETAIN ALL DATA USED TO CALCULATE RATES, CLASS RELATIVITIES, AND EXPERIENCE MODIFICATIONS, AS WELL AS ALL DATA UNDERLYING ANY LOSS COST OR OTHER FILING MADE WITH THE DEPARTMENT, AND ANY OTHER DATA THE SUPERINTENDENT MAY DIRECT, FOR SUCH PERIOD OF TIME AS THE SUPERINTENDENT SHALL DIRECT.

S 11. Paragraph 2 of subsection (a) of section 2316 of the insurance law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

(2) No insurer or rate service organization shall agree with any other insurer or rate service organization to charge or adhere to any rate, although insurers and rate service organizations, other than rate service organizations with respect to workers` compensation insurance, may continue to exchange statistical information.

S 12. Subsection (b) of section 2305 of the insurance law, as amended by chapter 113 of the laws of 1995, paragraph 13 as added by chapter 85 of the laws of 2003, is amended to read as follows:

(b) rate filings for:

(1) workers` compensation insurance;
(2) motor vehicle insurance, or surety bonds, required by section three hundred seventy of the vehicle and traffic law;
(3) joint underwriting;
(4) motor vehicle assigned risk insurance;
(5) insurance issued by the New York Property Insurance Underwriting Association;
(6) risk sharing plans authorized by section two thousand three hundred eighteen of this article;
(7) title insurance;
(8) medical malpractice liability insurance;
(9) insurance issued by the Medical Malpractice Insurance Association;
(10) mortgage guaranty insurance;
(11) credit property insurance, as defined in section two thousand three hundred forty of this article; and
(12) gap insurance
(13) Private passenger automobile insurance.

shall be filed with the superintendent and shall not become effective unless either the filing has been approved or thirty days, which the
superintendent may with cause extend an additional thirty days and with further cause extend an additional fifteen days, have elapsed and the filing has not been disapproved as failing to meet the requirements of this article, including the standard that rates be not otherwise unreasonable. After a rate filing becomes effective, the filing and supporting information shall be open to public inspection. If a filing is disapproved, notice of such disapproval order shall be given, specifying in what respects such filing fails to meet the requirements of this article. (The annual rate filing made pursuant to this article with regard to workers’ compensation insurance affecting the general rate level shall be subject to at least one public hearing to be convened by the superintendent at least ninety days prior to the effective date of new rates. The superintendent may in his or her discretion determine not to hold a public hearing, but only if the requested rate change is either a decrease or an increase of less than two percent. The superintendent shall be required to issue a written opinion on such rate filing at least sixty days prior to the effective date of the new rates. The opinion shall include, among other subjects deemed appropriate by the superintendent, a discussion of the profitability of the workers’ compensation insurance line, and the profit factor being permitted by the department.) Upon (its) HIS OR HER request, the (department) SUPERINTENDENT shall be provided with support and assistance from the workers’ compensation board and other state agencies and departments with appropriate jurisdiction. THE LOSS COST MULTIPLIER FOR EACH INSURER PROVIDING COVERAGE FOR WORKERS’ COMPENSATION, AS DEFINED BY REGULATION PROMULGATED BY THE SUPERINTENDENT, SHALL BE PROMPTLY DISPLAYED ON THE DEPARTMENT’S WEBSITE AND UPDATED IN THE EVENT OF ANY CHANGE.

S 13. Subsection (d) of section 2339 of the insurance law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

(d) (1) Notwithstanding any other provision of law, the state insurance fund shall not charge an insured ANY RATE, or receive from an insured any rate in excess of the (rate promulgated by the workers’ compensation rating board which does not constitute) TOTAL OF (I) THE APPLICABLE LOSS COST APPROVED BY THE SUPERINTENDENT, (II) THE APPLICABLE EXPENSE COMPONENT OF THE STATE INSURANCE FUND AND (III) a fair and reasonable differential charge, giving due regard to WHICH TAKES INTO CONSIDERATION the nature and hazards of (his) THE INSURED’S business or operations, (his) THE INSURED’S prior loss experience, (his) THE INSURED’S prior premium payment history, the number of persons (he) THE INSURED employs in such business or operations and the specific type of work they perform, (his) THE INSURED’S prior and current compliance with obligations imposed upon (him) THE INSURED by the workers’ compensation law and other laws which require premium or other payments by (him) THE INSURED on the basis of earnings and other remuneration earned by persons engaged in the furtherance of (his) THE INSURED’S enterprise or enterprises, the promptness and completeness of such reports as (he) THE INSURED has filed on accidents and claims, and such other factors as may be relevant to the appraisal of the insured or proposed insured as a risk in whole.

(2) A (premium rate for) DIFFERENTIAL CHARGE APPLIED BY THE STATE INSURANCE FUND TO A workers’ compensation and employer’s liability insurance (charged to an employer by the state insurance fund which is in excess of the rate promulgated by the workers’ compensation rating board) POLICY may be challenged by the (employer) INSURED by an appeal to the superintendent (of insurance) after an exhaustion by the (employ-
er) INSURED of all internal review procedures of the state insurance fund as established by rules adopted by the commissioners of the state insurance fund and filed with the secretary of state; provided that a writing setting forth the grounds upon which such appeal is based is served and filed with the superintendent (of insurance) and with the secretary to the board of commissioners of the state insurance fund within thirty days after a final determination by the state insurance fund. Appeals to the superintendent (of insurance) shall be determined upon papers and documents (which) THAT were before the state insurance fund in connection with the internal review procedures, the writing setting forth the grounds of the (employer’s) INSURED’S appeal and any answer (there to) TO SUCH APPEAL served by the state insurance fund upon the (employer) INSURED and filed with the superintendent within thirty days after the service of the (employer’s) INSURED’S notice.

S 14. Subsections (c), (d) and (e) of section 308 of the insurance law are REPEALED and subsections (f) and (g) are relettered subsections (c) and (d).

S 15. Subsection (a) of section 308 of the insurance law, as amended by chapter 666 of the laws of 1997, is amended to read as follows:

(a) The superintendent may also address to any health maintenance organization (or its officers or), any authorized insurer (or its officers) OR RATE SERVICE ORGANIZATION, OR OFFICERS THEREOF, any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as he shall designate, and affirmed by them as true under the penalties of perjury. In the event any corporation or person does not provide a good faith response to an inquiry from the superintendent pursuant to this section relating to accident insurance, health insurance, accident and health insurance or health maintenance organization coverage, within a time period specified by the superintendent of not less than fifteen business days, the superintendent is authorized to levy a civil penalty, after notice and hearing, against such corporation or person not to exceed five hundred dollars per day for each day beyond the date specified by the superintendent for response, but in no event shall such penalty exceed seven thousand five hundred dollars.

S 16. This act shall take effect February 1, 2008; provided that the amendments to paragraph 2 of subsection (a) of section 2316 of the insurance law made by section eleven of this act shall take effect on the same date that section 68 of chapter 6 of the laws of 2007 takes effect; provided further that the amendments to section 2316 of the insurance law made by section eleven of this act shall not affect the expiration of such section pursuant to section 2342 of the insurance law and shall be deemed expired therewith; and provided further that section ten of this act shall expire and be deemed repealed June 2, 2013.