

Delaware Compensation Rating Bureau, Inc.



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BUREAU CIRCULAR NO. 812

To All Members of the Bureau:

Re: **DELAWARE WORKERS COMPENSATION LEGISLATION**
SENATE BILL 1

On January 17, 2007 Delaware Governor Ruth Ann Minner signed Senate Bill 1, legislation amending Delaware's Insurance Code and Chapter 23 of Title 19, the Delaware Labor Code which contains the state's Workers Compensation Act.

This legislation, which was sponsored by every member of the Delaware General Assembly, was drafted during the latter half of 2006 by a group of legislators and invited constituencies. Some of the legislation's concepts appear to have been drawn from work done under the direction of the Delaware Department of Labor in 2005 and 2006. Insurers, insurance trades and the Delaware Compensation Rating Bureau, Inc. were not part of this drafting effort, and, as a result, the Bureau's review of the law could not commence until a few days before the legislature enacted Senate Bill 1.

In some key areas, Senate Bill 1 provides a platform for changes in the Delaware workers compensation system that will occur according to administrative steps and timetables set forth in the law. A Health Care Advisory Panel must be appointed by the Governor and then confirmed or accepted by the Senate. Once this Health Care Advisory Panel has been constituted and has met for the first time, specific time frames apply to the development of a health care payment system (180 days from the date of their first meeting) and health care practice guidelines (one year after their first meeting). In each case, the Bureau is required to submit rating value filings within 90 days after the finalization of the health care payment system and health care practice guidelines, respectively. Unless the timing of one or both of these events is particularly fortuitous, the Bureau will also be preparing and submitting a separate filing reflecting new experience and proposed to become effective December 1, 2007.

A summary of all provisions of Senate Bill 1 as published by the Delaware legislature is provided below:

This Act makes comprehensive changes to Delaware's workers' compensation system.

Section 1 of this Act authorizes the Delaware Department of Insurance to order restitution against or for the benefit of self-insured employers in connection with findings of insurance fraud.

Section 2 directs that a new workers' compensation rating plan be filed with the Insurance Commissioner within 90 days of the effective date of a medical payment system and practice guidelines and at least annually thereafter. Section 2 further requires that carriers make rate filings 60 days after the adoption of each such rating plan.

Section 3 of this Act expresses the intent that savings in costs actually realized as a result of this legislation's health care cost containment provisions will be reflected in prospective premiums through the rate filing process.

Section 4 implements procedures for collection of data relevant to the workers' compensation system in the State, including data concerning injury reports, mandatory insurance requirements and health care treatments and costs.

Section 5 clarifies the calculation of wage rates, particularly for employees with limited work histories.

Section 6 clarifies the obligations of independent contractors and subcontractors with respect to maintaining workers' compensation insurance.

Section 7 requires that petitions to the Industrial Accident Board for attorneys' fees be accompanied by affidavit and that fees awarded to an employee's counsel offset any financial obligation the employee otherwise has to such counsel.

Section 8 establishes new procedures for attorneys' fees in workers' compensation matters. Among other things, Section 8 requires that attorneys representing employees have written fee arrangements and limits an attorney's ability to collect fees from an employee's periodic benefit payments to special circumstances that are subject to verification and approval by the Industrial Accident Board.

Section 9 authorizes employers or insurance carriers to make payments of indemnity benefits or health care benefits without prejudice to the right to later contest the employer's obligation to pay the expense in question. This section of the Act is intended to streamline payments to an injured worker.

Sections 10 through 15 of this Act address the provision of health care in the workers' compensation system.

Section 10 establishes a Health Care Advisory Panel charged to develop various health care cost containment and efficiency measures.

Section 11 provides for a health care payment system intended to control health care costs in connection with workers' compensation. The system will be developed by the Health Care Advisory Panel and later adopted by regulation of the Department of Labor. The system will provide clear schedules of maximum acceptable charges for professional services, hospital services, independent treatment centers, laboratory and pharmaceuticals. Such schedules after adoption will be adjusted annually by reference to the consumer price index. When adopted, the schedules shall be readily available to providers and other interested parties through the Internet. The health care payment system is required to be adopted within six months of the first meeting of the Health Care Advisory Panel.

Section 12 provides for the development of health care practice guidelines. Such guidelines will implement best practice standards for treatment standards in workers' compensation. Such guidelines will be developed by the Health Care Advisory Panel and then adopted by regulation of the Department of Labor. Practice guidelines are required to be adopted within one year of the first meeting of the Health Care Advisory Panel.

Section 13 provides for the development of certification standards for health care providers treating employees in the workers' compensation system. Certification will require such providers to commit to certain standards in order to treat employees without pre-authorization. Such certification shall not be required for an employee's first treatment by a professional or for treatment by emergency medical personnel.

Section 14 provides for the adoption of forms for a consistent and uniform reporting system among employees, employers, insurance carriers and health care providers. Such forms are intended to better facilitate communication about an employee's condition, with the objective of returning the employee to health and employment.

Section 15 adopts certain standards for billing and payment of health care services. Among other things, these provisions ensure for prompt payment of health care expenses where they are performed in accordance with practice guidelines and invoiced with appropriate documentation to an employer or insurance carrier. Section 15 also prevents health care providers from billing an employee for health care fees or expenses where compensation is provided and ensures the coordination of reimbursement from either a workers' compensation recovery or (if workers' compensation is unavailable) from other potentially available health insurance. Section 15 also creates a utilization review procedure for prompt and efficient review of challenged health care procedures.

Section 16 clarifies the authority of the Department of Insurance to undertake fraud proceedings where the Department of Labor or the Industrial Accident Board has referred a case of suspected fraud to the Department of Insurance.

Section 17 of this Act allows the Industrial Accident Board to offset payment otherwise due to an employee where the Insurance Commissioner has made a finding of insurance fraud and ordered restitution.

Section 18 provides for workers' compensation matters before the Industrial Accident Board to be referred to mediation.

Section 19 provides a procedure to suspend workers' compensation benefits to persons who are incarcerated due to a criminal conviction.

Section 20 directs that the Industrial Accident Board, when reviewing a proposal to commute benefits, consider information relating to attorneys' fees and costs.

Section 21 requires that contractors and other parties doing substantial work within the State of Delaware ensure that their employees are adequately insured for workers' compensation under the laws of this State.

Section 22 strengthens mandatory insurance provisions by requiring insurance carriers to notify the Department of Labor of cancellation of coverage and requiring employers to either establish that the employer has gone out of business or is no longer required to maintain workers' compensation insurance. Section 22 also enhances penalties for violating mandatory insurance coverage provisions.

Section 23 formalizes a workplace safety program already implemented by the Department of Insurance. The program allows premium credit to certain employers who meet safety standards that are verified by the Department of Insurance.

Section 24 authorizes the Office of Workers' Compensation to engage the firm of Ingenix, Inc. to provide services in connection with the development of health care cost containment measures adopted in the Act. Ingenix is a health care information technology and consulting firm with extensive experience in addressing health care cost containment and affordability issues, both generally and in the specific area of workers' compensation

Complete text of Senate bill 1 can be found at:

[http://www.legis.state.de.us/LIS/lis144.nsf/vwLegislation/SB+1/\\$file/2381440006.doc?open](http://www.legis.state.de.us/LIS/lis144.nsf/vwLegislation/SB+1/$file/2381440006.doc?open)

The DCRB is engaged in ongoing review of Senate Bill 1 and evaluation of the impact of its various provisions on system costs and rating values to the extent that such impacts can be credibly estimated. As noted above, the law requires rating value filings to be submitted at specified points in time after completion of both the health care payment system and health care practice guidelines, and these filings will likely not coincide with the DCRB's annual rating value filings (generally effective December 1 of each year).

Many of the key provisions of the law are at least somewhat novel to Delaware and may present significant challenges in accomplishing credible, prospective evaluation of their impacts on system costs. Accordingly, Bureau members having or being aware of informational resources that may be useful in estimating the effects of Senate Bill 1 on Delaware workers compensation costs are invited to contact the DCRB to discuss those resources.

In the near term, many provisions of Senate Bill 1 were effective upon signature by the Governor. The DCRB will be issuing circular announcements addressing these as time and information permit, beginning with the portions of the law addressing independent contractors and out-of-state employers.

Questions about this circular or the DCRB's efforts in response to Senate Bill 1 can be directed to Bruce Decker, Senior Vice-President at **215-320-4411**, Mike Doyle, Chief Actuary at **215-320-4480** or me at **215-320-4413**.

Timothy L. Wisecarver
President

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