

WORKERS' COMPENSATION TASK FORCE REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY OF THE STATE OF DELAWARE

*Submitted pursuant to House Bill 175, 147th General Assembly
May 15, 2014*

The Workers' Compensation Task Force was created on January 30, 2013 by the Delaware General Assembly and the Governor, and charged with an expedited review of Delaware law relating to workers' compensation, the impact that the 2007 amendments to that law had upon workers' compensation premiums, the reasons for recent increases in workers' compensation premiums, and whether any additional changes to statutes, regulations, or practices are required to control growth in premiums.¹ The reason for the creation of the task force was to address the dramatic increase in Delaware's workers' compensation premiums over the prior two years (2011 and 2012), after four consecutive years of decreases that totaled over 40%. The task force delivered its first set of recommendations in May, 2013, and those recommendations were consolidated into House Bill 175 which passed the Delaware House of Representatives and Delaware State Senate unanimously. Among the provisions of House Bill 175 was one that continued the existence of this task force through June 30, 2014.

Prior Reform Efforts

As detailed in the task force's prior report, Delaware's workers' compensation premiums had risen by calendar year 2006 to be the third most expensive in the country. The primary reason for Delaware's high premiums was generally agreed to be medical costs – the Delaware Compensation Rating Bureau (DCRB) indicated that in 2006, medical costs were 60% of total workers compensation system costs in Delaware, as compared to 40% in surrounding states.

Two parallel reform efforts were initiated in 2006 to address Delaware's high and escalating workers' compensation premiums. First, the Department of Insurance (DOI) began a new process for analyzing the DCRB's annual request for 'loss cost' changes, which form the basis for rate change requests by all workers' compensation carriers. The Department began using a second actuarial expert, demanding that the DCRB provide the Department's experts with a larger universe of supporting information and sufficient time to analyze it, and scheduled public hearings where DCRB representatives could be questioned about the assumptions underlying their rate increase requests. These changes resulted in a voluntary market rate freeze in December, 2006 (applying to voluntary market policies renewing in late 2006 and most of 2007), a 17.75% - 22% cut in average rates in 2007, and a cut of 15.16% - 16.46% in 2008. The 2007 cut applied to policies renewing from December 1, 2007 to November 30, 2008; the 2008 cut applied to policies renewing from December 1, 2008 to November 30, 2009.

The second effort was a statutory reform effort led by Representative William Oberle and Senator Anthony DeLuca, with the assistance of Governor Ruth Ann Minner. Representative Oberle and Senator DeLuca convened a large group of stakeholders in the latter half of 2006, and

¹ House Joint Resolution No. 3, 147th General Assembly

the group produced a consensus workers' compensation reform bill (Senate Bill 1) that was enacted into law almost immediately when the General Assembly convened in January 2007. These reforms resulted in an additional 11.57% rate reduction in 2008, along with four years of one-time reductions ranging from 5% to 6% of the 2008 rates.

Cumulatively, these regulatory and statutory reforms had a dramatic impact on Delaware's overall rates (which dropped by over 40%) and on its standing with respect to other states. From 2006 to 2010, Delaware had moved from having the nation's 3rd most expensive workers' compensation premiums to having its 34th most expensive premiums. Rates² continued to drop in the 2009 and 2010 loss cost filings, as indicated in the chart below.

Workers' compensation rate changes since 2007 reform:

DATE	VOLUNTARY (Standard Policy Premiums)	RESIDUAL (Assigned Risk Premiums)
12/01/2007	↓ 17.75%	↓ 22.00%
10/01/2008	↓ 11.57%	↓ 11.57%
12/01/2008	↓ 16.46%	↓ 15.16%
12/01/2009	↓ 8.40%	↓ 9.17%
12/01/2010	↓ 2.51%	↓ 4.06%

However, in 2011 and 2012, loss cost ratios significantly increased. In addition, the four-year period of one-time rate reductions expired in connection with the 2012 filing. The Department of Insurance approved average voluntary market loss cost and residual market rate increases of 12.6% and 18.3% respectively in 2011. In 2012 the increases were 21.7% (voluntary market) and 26.1% (residual market).

DATE	VOLUNTARY (Standard Policy Premiums)	RESIDUAL (Assigned Risk Premiums)
12/01/2011	↑ 12.60%	↑ 18.30%
12/01/2012	↑ 21.70%	↑ 26.10%

On June 2, 2012, a bill (Senate Bill 238) revising the rate at which hospitals and ambulatory surgical centers would be reimbursed for treating workers' compensation recipients was introduced. It passed the General Assembly on June 30, 2012, was signed by the Governor, and took effect on January 31, 2013. Senate Bill 238 removed the provisions of the Delaware Code that required that hospital and ambulatory surgical centers be reimbursed at 85% of their actual charges for a given procedure in 2006, and, on January 31, 2013, replaced that requirement with one that they be reimbursed at 80% of their actual charges for a given procedure, adjusted for annual changes in the CPI for medical care. As noted in the task force's 2013 report, the task force learned in 2013 that hospitals had not been complying with the payment procedures set in 2007. The hospitals claimed that they could not comply with the 2007 statute because it imposed obligations that were inconsistent with federal Medicare rules and because of technology restrictions. Some task force members expressed concern that this five

² This report uses "rates" and "loss cost ratios" interchangeably when referring to rating organization filings with the Department of Insurance, because the loss cost ratios are the basis for the individual carrier rates that are ultimately approved by the Department. However, it should be understood that the loss cost ratios are the baseline for carriers' rate submissions, and not the rates themselves which can vary from the loss cost ratios.

year period during which hospitals had not been complying with the 2007 law had caused hospital reimbursements to increase at a rate substantially higher than the reimbursements for other health care providers. A presentation by the Medical Society of Delaware at the task force's March 7, 2014 meeting showed that workers' compensation reimbursements for operating room services, surgical implants, hospital reimbursements, and ambulatory surgical center reimbursements had increased at double to triple the rate of physician and rehabilitation service reimbursements, and four to six times the rate of chiropractor reimbursements. The task force noted in its 2013 report that hospitals were being reimbursed at approximately double the reimbursement rate paid to the lowest-cost providers for the three most common workers' compensation procedures.

The task force issued four categories of recommendations in 2013, all of which were adopted by the General Assembly in House Bill 175:

- New medical cost controls, including a two year cost of living increase freeze for the provider fee schedule, a reduction in the inflation index for hospitals and ambulatory surgical centers, the elimination of reimbursements at 85% of cost for procedures not on the fee schedule, new price controls on pharmaceuticals and anesthesia, limitations on drug testing, and a reduction in the presumptively permissible number of physical therapy visits;
- Increased scrutiny of workers' compensation insurance carrier practices, through the creation of the Ratepayer Advocate position and expansion of the Data Collection Committee's responsibilities to include oversight of whether individual insurance carriers were properly managing medical claims;
- Improve the efficiency of the state's back-to-work statute by placing heightened responsibility on insurance carriers to ensure employer compliance;
- Strengthen the state's workplace safety oversight process.

Notwithstanding an estimated medical cost savings of 7% from the reforms described above, all three actuaries reviewing the DCRB's rate request agreed that workers' compensation medical costs in Delaware had increased since the last rate request. Although the actuaries differed with respect to the impact of those medical cost increases, the Department of Insurance ultimately approved loss cost ratio increases of 14% in the voluntary market, and 11.4% in the residual market.

The task force stated in its 2013 report that if the reforms recommended in that report were not successful in controlling workers' compensation premium increases, then the task force would recommend stricter measures to control premiums. The task force believes that the 11.4% to 14% increase in rates resulting from the last filing was an unacceptable result, and that rates need to be reduced. Hence, the Workers' Compensation Task Force is recommending to the General Assembly and Governor the following additional reforms.³

³ There were two additional reform proposals placed before the task force by one of its members that the task force simply did not have time to consider given its deadline for making recommendations to the General Assembly and Governor. One was to implement a directed care system in Delaware where employers and/or carriers would be able to require that injured claimants be treated by specific health care providers, and the second was to continue the task force's existence and have it work collaboratively with the Workers' Compensation Research Institute.

RECOMMENDATIONS

1. HEIGHTENED OVERSIGHT OF INSURANCE CARRIERS

Last year, the task force recommended and the General Assembly and Governor approved a number of steps designed to provide better scrutiny of workers' compensation carriers' annual rate increase requests, and better scrutiny of individual carriers' diligence in holding down costs on individual claims. Those steps included the creation of a Ratepayer Advocate to represent rate-paying businesses during the Department of Insurance's annual workers' compensation 'loss cost ratio' review, and the expansion of the Data Collection Committee's role to include review of medical losses for the state's largest workers' compensation carriers.

The task force believes that although last year's reforms with respect to insurance carrier oversight were effective, they were also incomplete. First, the existence of two different committees with occasionally overlapping responsibilities for oversight of the workers' compensation system created inefficiency and delay. One product of that delay is that an important new responsibility of the Data Collection Committee – collection of information on the medical cost control practices of individual workers' compensation carriers and direction of examinations of those where there was evidence of inadequate practices – simply did not occur. ***Therefore, the task force recommends that the Data Collection Committee and the Health Care Advisory Panel be consolidated into a single committee, called the Workers' Compensation Oversight Panel. The new committee should consist of the existing members of the Health Care Advisory Panel, along with new members to ensure representation from participants in the workers' compensation system who previously served on the Data Collection Committee.***

Second, the Ratepayer Advocate did participate in the annual workers' compensation rate review process, but the task force was concerned by the dynamic created by the fact that the Ratepayer Advocate was appointed by and regularly communicated with the same entity before which he was to be an advocate. The task force believes that a truly independent Ratepayer Advocate will be able to more vocally advocate for appropriate rates. ***Therefore, the task force recommends that the Ratepayer Advocate be hired and overseen by the Workers' Compensation Oversight Panel, with staff support to be provided by the Department of Labor.***

2. STRICTER CONTROLS ON MEDICAL COSTS

All three actuaries who have reviewed the past three workers' compensation rate increase requests from the DCRB have agreed that the rate increases were the result of increased medical costs; their only difference of opinion has been over the long-term actuarial impact of those medical cost increases. A presentation to the task force in January, 2014 from the Workers' Compensation Research Institute (WCRI), an organization funded in large part by the insurance industry, provided the task force with an additional basis to assess Delaware workers' compensation medical costs, by comparing the per-procedure reimbursements in Delaware to similar reimbursements in other states. WCRI's statistics showed that although Delaware's reimbursements for office visits for workers' compensation patients were only about 7% higher than the national median, workers' compensation charges for surgery and specialty services were 50 to 135% higher than the national median. Of the 42 states with workers' compensation fee schedules examined by WCRI, Delaware's fee schedule was the fourth highest in the country.

The task force's recommendation for achieving a reduction in workers' compensation rates is based in part upon a conservative estimate of the total medical savings necessary to achieve such a rate reduction, and in part on a desire to ensure that those medical cost savings are spread fairly among medical providers. The actuary who provided services to the ratepayer advocate in 2013 has estimated that a 29% medical cost savings in 2013 would have resulted in a 10% rate reduction at that time. (DCRB believes that a much higher medical cost reduction of 51% would have been necessary to achieve a 10% rate reduction.) ***Therefore, in order to maximize the odds of a rate reduction in the upcoming rate filing, the task force recommends that the Workers' Compensation Oversight Panel be directed to create a new medical fee schedule, using multipliers of medical codes used by the Centers for Medicare and Medicaid Services, which results in a 33% savings from all providers. The task force recommends that this 33% reduction be phased in over a three year period, with 20% of the reduction occurring immediately, a 5% additional reduction occurring after one year, and an 8% additional reduction occurring after two years.***

It is important that medical cost savings not be imposed disproportionately on particular providers. ***Based on information provided regarding health care provider reimbursements for workers' compensation procedures around the country, the task force also recommends that the maximum reimbursement for workers' compensation treatment under any given code be no more than 200% of the Medicare reimbursement, with the exception of radiology for which the maximum reimbursement should be no more than 250% of Medicare and surgery for which the maximum reimbursement should be no more than 300% of Medicare.***

The task force recognizes that there are many uncertainties in the workers' compensation rate-setting process. ***Therefore, the task force recommends that the General Assembly (through the Workers' Compensation Oversight Panel) monitor both the rate impact of these recommendations and their impact upon providers as the recommendations are phased in, and make statutory adjustments in the fee schedule if appropriate. This ongoing review should***

include a determination of whether providers have been able to bring about greater than expected rate reductions through practice changes, and whether particular providers have been disproportionately impacted by the revisions to the fee schedule. However, the task force does not recommend any future statutory change that would reduce the aggregate savings from the fee schedule changes from the 33% recommended.

3. CONSIDERATION OF NEW RATING ORGANIZATION

Following concerns expressed by some task force members about the methodologies used by the rating organization currently authorized by the Department of Insurance, the task force met with the nation's largest rating organization to learn about potential differences between that organization and the one currently authorized.

Selection of the rating organization for Delaware workers' compensation insurance carriers is at present the exclusive responsibility of the Department of Insurance. The task force recommends that DOI undertake a formal assessment of whether there should be a change in the rating organization used by Delaware insurance carriers, and include members of the task force who have expressed concerns about the current situation in that formal assessment.

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