

## ***Delaware Compensation Rating Bureau, Inc. (DCRB)***

Supplemental Comments to “Workers Compensation Task Force Report to the Governor and General Assembly of the State of Delaware dated May 14, 2014” (hereinafter, “the May 14, 2014 Report”)

The DCRB is a member of the Workers Compensation Task Force (Task Force), and has provided extensive informational materials used by the Task Force in the course of its discussions and work. House Bill No. 175 continued the existence of the Task Force through June 30, 2014. House Joint Resolution 3 permitted any member of the Task Force that wished to formally dissent from the findings or recommendations of the Task Force to do so as part of the Task Force’s report.

The DCRB is a private, non-profit 501(c) (6) corporation. The DCRB’s core mission is to serve as the licensed rating or advisory organization, as the case may be, pursuant to all relevant Delaware laws and regulations. In particular, the DCRB serves as the designated advisory organization pursuant to Title 18, Chapter 26 of the Delaware Code, titled Workers’ Compensation Rating, and the DCRB is licensed by the Delaware Department of Insurance to serve in that capacity. The DCRB has been Delaware’s designated advisory organization for almost 100 years.

The DCRB is not organized to represent or speak on behalf of its membership, which consists of all insurance carriers licensed to underwrite workers compensation insurance in the State of Delaware, on matters of public policy. It is for that reason that the DCRB has abstained from all substantive votes conducted by the Task Force during the course of its meetings.

The DCRB strongly believes that some background and clarification pertaining to selected elements of the May 14, 2014 Report will be useful to the Governor, the General Assembly and other readers. For that reason we respectfully submit the following comments concerning the subjects of “heightened oversight” of insurance carriers and the scope of changes recommended by the May 14, 2014 Report.

### ***“Heightened Oversight” of Insurance Carriers***

The May 14, 2014 Report recommends that the Data Collection Committee and the Health Care Advisory Panel be consolidated into a single committee, called the Workers Compensation Oversight Committee, consisting of the existing members of the Health Care Advisory Panel together with new members to ensure representation from participants in the workers compensation system who previously served on the Data Collection Committee.

Based on the May 14, 2014 Report language, the DCRB anticipates, and supports, the inclusion of the several insurer representatives that have served on the Data Collection Committee as members of the Workers Compensation Oversight Committee if and when that new body is defined.

In support of this recommendation, the May 14, 2014 Report asserts that “the existence of two different committees [Data Collection Committee and Health Care Advisory Panel] with occasionally overlapping responsibilities for oversight of the workers compensation system created inefficiency and delay,” and that “one product of that delay” was that “collection of information on the medical cost control practices of individual workers compensation carriers and direction of examinations of those [carriers] where there was evidence of inadequate [medical cost control] practices – simply did not occur.”

In fact, the DCRB submitted a report of medical experience for the nine largest insurer groups in Delaware to the Chair of the Data Collection Committee on August 1, 2013. At the request of the Workers Compensation Task Force, the DCRB subsequently supplemented that information with a report of experience for the 78 companies within those nine groups that wrote any Delaware workers compensation insurance business from 2001 through 2010, inclusive. That supplemental report was also delivered to the Chair of the Data Collection Committee. The Chair of the Data Collection Committee promptly forwarded both of these DCRB submissions to the Data Collection Committee members. Thus, the “collection of information on the medical cost control practices of individual workers compensation carriers” did take place and was accomplished in a comprehensive fashion that exceeded the provisions of language enacted in House Bill No. 175, which only required review of carriers writing 3 percent or more of the Delaware workers compensation insurance market, of which there were just two during 2012.

As to the Data Collection Committee’s direction of examinations of carriers by the Delaware Department of Insurance, the DCRB knows that subsequent to receiving the above-described data, a Subcommittee was formed within the Data Collection Committee to lead that aspect of the Data Collection Committee’s activity. By virtue of its attendance at Data Collection Committee meetings, the DCRB is also aware that the Delaware Department of Insurance did examine selected companies to ascertain their compliance with prevailing provisions of Delaware’s health care payment system, and we believe that those examinations confirmed the carriers’ practices and procedures in all material respects.

### ***Scope of Changes Recommended in the May 14, 2014 Report***

The May 14, 2014 Report recommends the creation of 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, and which further takes account of specific maximum fees expressed as functions of prevailing Medicare rates.

The savings level targeted in these recommendations is quite ambitious. The work that has already been done, and that will still be required, by the Task Force, the Health Care Advisory Panel, the Delaware Department of Labor and other parties, in order to accomplish the completion of these objectives, is also very extensive.

While the purpose of the recommendations is laudable and the commitment of resources to their accomplishment is substantial, readers of the May 14, 2014 Report should be aware that workers compensation systems involve multi-faceted interactions between many parties including workers, employers, insurers, regulators and administrators. As such, there are many aspects of Delaware's system that warrant attention as potential sources of cost savings. To the extent that the set of system features that can be considered and modified to the purpose of mitigating costs is increased, the cumulative effect of such changes would also increase and the beneficial effect of the reform measures would become larger.

First, as acknowledged in footnote 3 of the May 14, 2014 Report, the matter of employer participation in selecting medical care providers was on Task Force discussion agendas but was never opened for consideration due to other topics being given priority over that important subject. There is evidence that employer direction of medical care may increase network involvement in workers compensation claims and thereby reduce medical costs<sup>1</sup>.

Second, the DCRB continues to believe that the duration of workers compensation claims, which has been increasing significantly and persistently over time, is a key cost driver in Delaware.

Attachment 1 illustrates this aspect of the Delaware workers compensation experience by measuring the portion of reported indemnity claims that have remained open at comparable points in time for policy years 1997 through 2010, inclusive. Attachment 1 shows that, over the course of that 14-year period, persistently increasing periods of time have been required to resolve and close

<sup>1</sup> WCRI study, "Provider Choice Laws, Network Involvement, and Medical Costs". Richard A. Victor, Dongchun Wang, Philip Borba. December 2002. SC-02-05.

workers compensation claims in Delaware. As claims remain open for longer periods of time they will generally qualify for greater amounts of indemnity benefits, require more medical treatment and become more susceptible to the emergence of administrative disputes which would require time and resources to address. Such disputes themselves would also contribute to later final resolution of those cases. Features of the Delaware system which have contributed to this adverse pattern, or which could be improved to slow or reverse this trend, are impacting the ongoing costs associated with this line of insurance.

Some aspects of the Delaware workers compensation system that may be contributing to the growing duration of workers compensation claims include, but are not limited to:

- (a) certain aspects of the utilization review process (wherein the standards for decisions made during different stages of adjudication differ),
- (b) features of the existing mediation process that seem to result in limited use of, and success of, that system, and
- (c) possible opportunities to improve the efficiencies of the hearing procedures used to decide components of workers compensation settlements (temporary partial disability, impairment percentages and scarring).

Integrating a variety of changes involving different aspects of the workers compensation system into legislative drafting may increase the collective savings that can be accomplished, while also balancing the implications of such changes across multiple interest groups to a greater extent than would occur with a single initiative.

Finally, in anticipation that the Task Force will continue to monitor Delaware's workers compensation system beyond June 30, 2014, the DCRB strongly recommends that the Task Force membership be expanded to include workers compensation insurance carriers. These enterprises can contribute the in-depth knowledge and perspective of businesses that actually handle workers compensation claims to the Task Force's discussions and deliberations. They also share their clients' (the policyholders') interest in having stable and predictable system costs.

## DELAWARE COMPENSATION RATING BUREAU, INC.

### RATIO OF NUMBER OF OPEN INDEMNITY CLAIMS TO NUMBER OF REPORTED INDEMNITY CLAIMS

| POLICY<br>YEAR | Report Level: |               |               |               |               |               |               |               |               |               |
|----------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
|                | FIRST         | SECOND        | THIRD         | FOURTH        | FIFTH         | SIXTH         | SEVENTH       | EIGHTH        | NINTH         | TENTH         |
| 1997           | 0.3302        | 0.1838        | 0.1181        | 0.0761        | 0.0583        | 0.0493        | 0.0409        | 0.0360        | 0.0314        | 0.0280        |
| 1998           | <b>0.3439</b> | <b>0.1856</b> | 0.1160        | <b>0.0840</b> | <b>0.0649</b> | <b>0.0550</b> | <b>0.0429</b> | <b>0.0364</b> | <b>0.0315</b> | 0.0274        |
| 1999           | <b>0.3885</b> | <b>0.2104</b> | <b>0.1286</b> | 0.0819        | 0.0638        | 0.0502        | 0.0384        | 0.0353        | 0.0308        | <b>0.0280</b> |
| 2000           | 0.3839        | <b>0.2264</b> | <b>0.1494</b> | <b>0.1077</b> | <b>0.0820</b> | <b>0.0655</b> | <b>0.0552</b> | <b>0.0464</b> | <b>0.0392</b> | <b>0.0359</b> |
| 2001           | <b>0.4023</b> | <b>0.2381</b> | <b>0.1498</b> | 0.1015        | 0.0805        | 0.0643        | 0.0539        | 0.0448        | <b>0.0399</b> | 0.0357        |
| 2002           | 0.3743        | 0.2261        | 0.1372        | 0.1011        | 0.0719        | 0.0586        | 0.0478        | 0.0382        | 0.0341        |               |
| 2003           | 0.3670        | <b>0.2346</b> | <b>0.1423</b> | 0.1002        | <b>0.0761</b> | <b>0.0615</b> | <b>0.0531</b> | <b>0.0444</b> |               |               |
| 2004           | <b>0.3721</b> | 0.2309        | <b>0.1535</b> | <b>0.1020</b> | <b>0.0863</b> | <b>0.0671</b> | <b>0.0534</b> |               |               |               |
| 2005           | <b>0.3847</b> | <b>0.2353</b> | <b>0.1653</b> | <b>0.1089</b> | 0.0850        | <b>0.0710</b> |               |               |               |               |
| 2006           | <b>0.3997</b> | <b>0.2671</b> | 0.1593        | <b>0.1115</b> | 0.0832        |               |               |               |               |               |
| 2007           | <b>0.4205</b> | 0.2525        | <b>0.1623</b> | <b>0.1264</b> |               |               |               |               |               |               |
| 2008           | <b>0.4333</b> | <b>0.2720</b> | <b>0.1824</b> |               |               |               |               |               |               |               |
| 2009           | <b>0.4563</b> | <b>0.2857</b> |               |               |               |               |               |               |               |               |
| 2010           | 0.4297        |               |               |               |               |               |               |               |               |               |

Note: "Report Level" refers to a series of ten annual reports summarizing experience on each workers compensation insurance policy. The first report is based on information as of 18 months after policy inception. Each subsequent report is based on information as of 12 months later than the previous report.

Bold boxed entries show higher ratios of open claims (longer claim duration) than the previous policy year at the same report level.

Higher ratios of open claims are associated with larger amounts of ongoing benefit payments and higher claims costs.