



Karen Weldin Stewart, CIR-ML  
Commissioner

Delaware Department of Insurance

May 10, 2013

Matthew Denn, Lieutenant Governor  
Office of the Lieutenant Governor  
820 N. French Street, 12<sup>th</sup> Floor  
Wilmington, Delaware 19801

**RE: Workers Compensation Task Force**

Dear Lt. Governor Denn:

I would like to join the other members of the Workers Compensation Task Force in thanking you for your leadership and hard work culminating in the Task Force's Report and Recommendations. As a member of the Task Force and on behalf of Commissioner Stewart, I support the majority of the recommendations in the report, and believe that they can help significantly to reduce medical and other cost drivers that increased workers compensation insurance rates in Delaware.

In accordance with House Joint Resolution 3, I am writing respectfully to advise you of a few areas where the Commissioner disagrees with specific language in the draft report. As you know, I explained these objections earlier, on May 3, 2013, in an email to Deputy Director Kirk, who circulated the email to all members of the Task Force.

As reflected in the specific objections below, the Commissioner's underlying concern is that no provision in the report should seek to diminish or interfere with the constitutional or statutory powers of the Office of Insurance Commissioner of the State of Delaware.

**1. Excerpt from Draft Report:**

**Change Title 18, Section 2610 of the Delaware Code to require appointment by the Department of Insurance (DOI) of an attorney to represent ratepayers through the rate-setting process, with authority for the appointed attorney to retain an actuarial expert and demand additional data and other factual information from the applicant.** By appointing an outside advocate for rate-payers and providing that advocate with adequate time, data, and expert assistance to prepare for a rate hearing, DOI can ensure that the hearing officer for any rate

increase application will hear evidence of any excessive reserve requests or other unnecessary costs being sought by insurance carriers during the DCRB's annual rate filing. The task force contemplates that the outside advocate would be hired at a flat fee for a limited period of months, and that DOI would need only one actuary to analyze the rate filing rather than two if the outside advocate is using his or her own actuary. Costs would be borne by the applicant.

**DOI Response: The DOI objects to this proposal because it duplicates the Commissioner's existing statutory duty, with the assistance of experts and counsel, to examine workers compensation filings and to protect ratepayers. The purpose of the public information session and public hearing process is to allow ratepayers and other members of the public to be heard. It is the duty of the Commissioner, and not a private attorney, to protect the ratepayers. As an alternative which avoids interference with the Commissioner's powers, DOI suggests adding the underlined language to 18 Del. C. §2610, which is similar to existing language in 18 Del. C. §5003(d)(3):**

§ 2610. Review of insurance filings.

(a) The Commissioner shall investigate and review each insurance filing under the following guidelines:

(1) The effective date of each workers' compensation insurance filing shall be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the date the filing is received by the Commissioner or the date of receipt of the information furnished in support of the filing if such supporting information is required by the Commissioner.

(2) Upon written application of the insurer or advisory organization, the Commissioner may authorize a filing, which the Commissioner has reviewed, to become effective before the expiration of the period described in paragraph (1) of this subsection.

(3) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the Commissioner within the period described in paragraph (1) of this subsection or any extension thereof.

(4) The Commissioner may retain at the rating bureau's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the filing.

**2. Excerpt from Draft Report:**

**Require by statute that any rating bureau, as part of its annual lost cost filing with DOI, provide the Data Collection Committee with data indicating the total medical cost increases for each individual carrier with a 1% or greater share of the Delaware market whose losses are included in the data underlying the rate filing. The Data Collection Committee shall, in turn, direct DOI to conduct an examination of any carriers whose medical expenses are deemed by the Data Collection Committee to be so high as to warrant further examination.**

The purpose of this statutory change would be to identify those carriers who are not being sufficiently diligent about tracking frequency of treatment and complying with the requirements of the fee schedule.

**DOI Response:** The DOI objects to the underlined portion of this proposal because it interferes with the Commissioner's statutory responsibility for ordering examinations of insurance companies "as often as the Commissioner in the Commissioner's sole discretion deems appropriate...." 18 Del. C. §318(a). The Data Collection Committee should not be empowered to issue orders to an elected official regarding the exercise of her statutory power to regulate insurers. However, it would be appropriate to require the Commissioner to consider any recommendation by the Data Collection Committee that she order an examination, and provide a written explanation to the Data Collection Committee in the event the Commissioner does not accept the committee's recommendation. Thus, this section of the report should be changed to include the underlined language below:

Require by statute that any rating bureau, as part of its annual lost cost filing with DOI, provide the Data Collection Committee with data indicating the total medical cost increases for each individual carrier with a 1% or greater share of the Delaware market whose losses are included in the data underlying the rate filing. The Data Collection Committee, in turn, may recommend to the Commissioner that the Commissioner order an examination of any carriers whose medical expenses are deemed by the Data Collection Committee to be so high as to warrant further examination; and the Commissioner shall either order an examination of any company the Data Collection Committee so designates, or provide a written explanation to the Data Collection Committee of the reasons why the Commissioner deems such an examination inappropriate.

**3. Excerpt from Draft Report:**

- The General Assembly required the Department of Insurance to create an advisory committee that would "evaluate the workers' compensation system in the State of Delaware, identify systemic cost drivers and provide objective information to guide policy formulation." The law also required the Department of Insurance to report annually to the Governor and General Assembly the progress of data collection efforts and information obtained from the analysis of the data collected. (The Committee and its procedures were created, but to date no reports have been issued.)

**DOI Response:** The DOI objects to the underlined portion of the report, because it is inaccurate. The correct statement is "The Committee and its procedures were created, and two (2) reports have been issued."

Thank you for allowing the opportunity to submit this letter today, and for including the above concerns with the final report.

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The Commissioner and I look forward to working with you, other Task Force members, and members of the General Assembly in carrying out the laudable recommendations in the Report, subject only to the objections I have stated above.

Respectfully,

A handwritten signature in black ink, appearing to read "Gene T. Reed". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gene T. Reed  
Deputy Commissioner

cc: Task Force Members (by email)