REGULATORY AGENDA

Workers' Compensation Board

Pursuant to section 202-d of the State Administrative Procedures Act, notice is hereby provided of the following rules which the Workers' Compensation Board is considering proposing but for which a rule making proceeding has not been commenced. All references are to Title 12 of the New York Code of Rules and Regulations unless otherwise noted. The Workers' Compensation Board's regulatory plans are subject to change and the Board reserves the right to add, delete or modify any item herein. The Board is not required to propose for adoption any rule summarized in this regulatory agenda. In addition, the Board may propose a rule for adoption which was not under consideration at the time that this regulatory agenda was submitted for publication.

This notice is also intended to provide small businesses, local governments, and public and private interests in rural areas with the opportunity to participate in the rule making process, as provided for in State Administrative Procedures Act sections 202-b and 202-bb. All of the rules described below may require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis pursuant to State Administrative Procedures Act sections 202-b and 202-bb, respectively.

The public is welcome to send written comments on the Workers' Compensation Board's Regulatory Agenda to the contact person at the end of this list.

The Workers' Compensation Board is considering proposing the following rules:

1. Addition of Parts 440 and 442 to provide fee schedules to govern the cost of prescription medicines and durable medical equipment in order to control the cost of workers' compensation insurance. Additionally, such proposal would provide process and guidance for claimants, employers, insurance carriers, third party administrators and self-insured employers regarding the operation of pharmacy networks and the payment of prescription bills and durable medical equipment bills according to a uniform standard so that delays in reimbursement or payment to claimants or pharmacies are reduced or eliminated.

2. Addition of section 325-2.11 regarding the introduction of Diagnostic Networks, which shall include definitions of specified terms such as "reasonable distance from the claimant's residence or place of employment," descriptions of the notices that must be provided to employees and treating providers, and establish necessary processes. This rule will also amend any existing rules that would contradict this regulation.

3. Amend Section 300.2 regarding independent medical examinations regarding the time period within which reports of such examinations must be filed with the Board and served on all others, procedures for review of records without an examination of a claimant, process to revoke the authorization of an independent medical examiner whose medical license has been restricted or Board Certification revoked, and process to impose a penalty not to exceed $10,000 and revoke the registration of an Independent Medical Examination (IME) Entity which has engaged in misconduct or upon a finding that an IME Entity has materially altered or caused to be altered an IME report.

4. Amend Part 326 to implement procedures to temporarily suspend or revoke the authorization of a physician who is guilty of professional or other misconduct or incompetence or practice outside his/her scope with regard to rendering medical services.

5. Add provisions that establish an independent review & appeal by an outside agent or entity of the Board's choosing of any administrative law judge's determination to discontinue or suspend medical services for a claimant who has surpassed his/her number of maximum benefit weeks before a final determination of the Board.

6. Add a new Part 308 to establish the method of calculating the cost of a workers' compensation policy for purposes of Workers' Compensation Law § 52(5) and § 131, to identify the business records that employers must keep and maintain in accordance with Workers' Compensation Law § 131 and § 141-a, and establish the process for an application for redetermination of the issuance of a stop-work order.

7. Add a new Part 309 to establish requirements to join the Independent Livery Driver's Benefit Fund and the calculation of a an independent driver's average weekly wage.

8. Add provisions that establish the use of medical treatment guidelines for the low back, cervical spine, shoulder and knee. The treatment guidelines are those recommended in the report of the Superintendent of Insurance dated December 3, 2007, and how they are to be used will be based upon the implementation standards set forth in the report from the Superintendent of Insurance from June 2007.

9. Add a new Part 304 to set forth the provisions governing the direct deposit of workers' compensation benefit payments.

10. Add a new Part 325-9, pursuant to Workers' Compensation Law sections 13 (e) and 20, to establish guidelines and parameters for the use of impartial medical specialists when an established claim requires an expert opinion or examination.

11. Amend Subparts 302-1 and 302-2 to revise the rules governing licensed representatives. The amendments will separate the provisions that apply to third-party administrators from those of licensed claimant representatives and address applications, duties, standards of conduct and licensure.

12. Amend Subpart 302-3 to establish rules for the licensing and conduct of group administrators of group self-insured trusts pursuant to Workers' Compensation Law § 50(3-a)(5).

13. Repeal and readopt Part 317 regarding group self-insured trusts to establish application procedures, qualifications, and responsibilities for any group of employers who wish to become, or have been approved to operate as, a group self-insurer.

14. Amend Section 310.2 regarding the process for imposing the penalty pursuant to Workers' Compensation Law § 110(4) on employers who fail or refuse to file the prescribed form for reporting a work related accident or exposure resulting injury or illness to the Board.

15. Amend Section 325-1.24 regarding the payment of medical bills to require the use of forms prescribed by the Chair of the Board to bill for medical treatment and object to such bills and to notify treating providers that a claim is controverted.

16. Amend Subparts 325-5 and 325-6 regarding the Health Insurer Matching Program to clarify the statute of limitations, set forth the timely filing of a reimbursement request, amend the defenses a work-

ers' compensation insurer may raise in response to a claim and eliminate partial matches.

17. Add a new part 300.39 to establish rules for the cross-examination of medical witnesses and to repeal section 300.10(c).

18. The Board will continue to review its rules in an effort to provide for clearer and more accurate references to Board policies and procedures, while also eliminating typographical errors and obsolete forms/practices, etc.

To obtain information about or submit written comments concerning any item in this Regulatory Agenda, contact: Cheryl M. Wood, Special Counsel to the Chair, Workers' Compensation Board, 20 Park Street, Rm. 400, Albany, NY 12207, e-mail: regulations@wcb.state.ny.us