

May 2006

**WEST VIRGINIA INFORMATIONAL LETTER**

**NO. 157**

**TO: All Insurance Companies Authorized to Sell Workers' Compensation Insurance in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications, Third Party Administrators, Employers Authorized to Self Insure Workers' Compensation Risk pursuant to W. Va. Code § 23-5-9, and Other Interested Persons.**

**RE: Dependents' Death Benefit Claims under W. Va. Code § 23-4-10**

The purpose of this Informational Letter is to inform all interested parties of the Insurance Commissioner's interpretation and enforcement position as it relates to claims for dependents' death benefits under W. Va. Code § 23-4-10.

Prior to its termination on January 1, 2006, the West Virginia Workers' Compensation Commission ("WCC") adopted policy 2.02, which addressed termination of dependents' death benefits. The policy, adopted in March of 2004, provided that dependents' death benefits terminate at the date of the applicable event established in W. Va. Code § 23-4-10, or when the deceased employee would have attained the age of 65<sup>1</sup> or 70<sup>2</sup>, whichever occurs first.

Pursuant to W. Va. Code §§ 23-2C-22 and 33-2-21, the authority to enforce the existing rules of the WCC, and to enforce the regulatory functions, powers and duties of the WCC as set forth in Chapter 23 of the West Virginia Code, transferred from the WCC to the Insurance Commissioner effective upon termination of the WCC. Accordingly, it is now within the Insurance Commissioner's authority to administer the provisions of Chapter 23 as they relate to the issue of dependents' death benefits.

It has been determined that policy 2.02 of the former WCC does not represent the best interpretation of statutory language relating to the duration of payment of dependents' death benefits made under W. Va. Code § 23-4-10. Rather, the provisions of policy 2.02 that terminate dependents' death benefits at the date on which the deceased employee would have attained the age of 65 or 70 should not apply to these claims. In keeping with this interpretation, any insurer transacting workers' compensation insurance in this State, any self-insured employer or employer group that is authorized to self administer claims pursuant to

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<sup>1</sup> Policy 2.02 provided that if the deceased employee was awarded a PTD before July 1, 2003 with a date of injury between May 12, 1995 and June 30, 2003, the duration of dependents' death benefits would be until the date of the applicable event established in W. Va. Code §23-4-10 or until the deceased employee, had he or she lived, turned age 65, whichever occurs first.

<sup>2</sup> Policy 2.02 provided that if the deceased employee was awarded a PTD on or after July 1, 2003, or if the employee died before or after July 1, 2003 without a PTD award, the duration of dependents' death benefits would be until the date of the applicable event established in W. Va. Code §23-4-10 or until the deceased employee, had he or she lived, turned age 70, whichever occurs first.

W. Va. Code § 23-2-9(b), and any third party administrator that is adjusting workers' compensation claims in this State shall immediately cease application of the provisions of policy 2.02 that terminate dependents' death benefits at the date on which the deceased employee would have attained the age of 65 or 70. Further, any dependents' death benefits that have been terminated pursuant to these provisions of policy 2.02 shall be restored and reinstated by the appropriate party, and any sums that were not paid because of the application of these provisions shall be promptly paid.

Any questions regarding this Informational Letter should be addressed to Mary Jane Pickens, General Counsel, at 304.558.0401 or [mj.pickens@wvinsurance.gov](mailto:mj.pickens@wvinsurance.gov).

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Insurance Commissioner