September 2009

WEST VIRGINIA INFORMATIONAL LETTER

No. 173

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

RE: **Alternative Payment Methods for Benefit Awards**

Since the privatization of the workers' compensation market on January 1, 2006, questions have arisen regarding what limitations, if any, there are regarding the ways in which benefit awards can be delivered to claimants in workers' compensation claims. The purpose of this Informational Letter is to share the Insurance Commissioner's interpretation of recent legislative action regarding the manner of delivery of benefits and to provide guidance to interested parties on this topic.

The only reference to a specific method of benefit delivery in the Workers' Compensation Code is found in West Virginia Code Section 23-4-1c(f). Prior to amendments made during the 2009 regular session of the West Virginia Legislature, this section required the Workers' Compensation Commission, when the employer in a claim is a subscriber to the Workers' Compensation Fund, to mail all checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant. It is reasonable to assume that the basis for this has been to ensure that claimants receive benefits promptly. This Code section was amended by the West Virginia Legislature during the regular 2009 legislative session in Senate Bill 537, which has an effective date of July 10, 2009. The amendments relating to benefit delivery state that the Insurance Commissioner, private carrier or self insured employer shall deliver amounts due for these benefits directly to the claimant, thus removing from the statute references to "mailing" of "checks" for temporary total disability benefits to the claimant. The Legislature's amendments, combined with the lack of other specific legislative

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directives on the method of delivery of any other type of workers' compensation benefit, is interpreted by the Insurance Commissioner to permit payers to use alternative modern methods of benefit delivery in our state.

Therefore, an employer, insurer, third party administrator ("TPA") or other payer may use an electronic payment system for the delivery of workers' compensation indemnity benefits to claimants, including, but not limited to, a direct deposit, debit card, pre-paid card or similar payment system, as an alternative method of payment. The claimant must elect the use of one of these methods before it may be used. In addition:

    (a) The payment method must ensure that the claimant can obtain immediate payment in full for the benefit due;

    (b) The claimant must receive at least one free transaction per benefit payment period and any fees or other charges associated with the payment method must be prominently disclosed to and subject to the written consent of the claimant;

    (c) The alternative method of payment must be easily and readily accessible to the claimant; and

    (d) No other requirements or restrictions may apply to the payment method that a reasonable person would find to be an unreasonable burden or inconvenience.

As long as these requirements are met, electronic payment methods will be permitted as an alternative to paying workers' compensation indemnity benefits in the form of paper checks.

Please keep in mind that the purpose of this Informational Letter is to allow claimants the convenience of choosing how they would like to receive the payment of their benefits. Electronic payment methods may not be implemented if it would result in excessive fees or an undue burden upon the claimant.

Any questions regarding this Informational Letter should be addressed to the Legal Division at (304) 558-0401 or legal@wvinsurance.gov.

ss://Jane L. Cline
Jane L. Cline
Insurance Commissioner