

Offices of the Insurance Commissioner

EARL RAY TOMBLIN
Governor

MICHAEL D. RILEY
Acting Insurance Commissioner

NOTICE

REGARDING WORKERS' COMPENSATION DECISIONS

**To: Insurers Providing Workers' Compensation Coverage in West Virginia,
Third Party Administrators and Self-insured Employers**

From: West Virginia Offices of the Insurance Commissioner

Date: October 14, 2011

Re: Content of Orders Issued in West Virginia Workers' Compensation Claims

The purpose of this notice is to provide guidance from the West Virginia Offices of the Insurance Commissioner ("OIC") relating to the content of orders issued in West Virginia workers' compensation claims. This guidance is intended for all carriers, third party administrators, and employers who have been approved for self-insured status.

On July 1, 2008, all appropriately licensed carriers were authorized to sell workers' compensation insurance in this state. Three years after privatization, over 180 private carriers have issued policies in the open market. While these numbers certainly speak to the success of privatization and the open market, they also indicate that a significant number of carriers who have not had a history of navigating our state's workers' compensation system are now selling workers' compensation coverage and adjusting claims in our state. Although a learning curve was to be expected in the early stages of privatization, we are now three years into the open market and it is the OIC's expectation that all administrators of workers' compensation claims will now be managing their claims in strict accordance with the legal requirements of this state. However, we continue to see claims in which protestable orders are either not properly issued at all, or once issued, are deficient in various ways. As part of our continuing effort to ensure compliance by carriers, TPA's and self-insured employers in managing workers' compensation claims, we are issuing this notice as a reminder of the basic legal requirements of a proper worker's compensation claims order. You are instructed to review the following information closely to ensure that future orders are properly issued in compliance with the laws, rules and regulations of West Virginia. This information should be shared with those people who administer claims for your company.

- Pursuant to W. Va. Code § 23-5-1(b)(1), an order or written decision should be issued upon making any final decision, upon making or refusing to make an award, or upon making any modification or change with respect to former findings or orders. Put simply, an order or written decision should be issued any time a final action is taken by the administrator regarding the claimant's benefits. This would include a grant or denial of medical, rehabilitation or indemnity benefits, and/or any decision regarding the closing or reopening of a claim.



- In addition, all orders or written decisions must include certain basic information in order to be compliant with state law or to better assist with a claimant's understanding of the order or in the event of litigation:
 - Any order or written decision should be dated so that the order or decision may be clearly identified as needed in later administration or litigation.
 - Any order or written decision must state the issue being decided. For example, if the administrator is acting upon a request for medical treatment, the order should identify the specific type of medical treatment being requested.
 - The order or written decision must state the administrator's decision; that is, whether the carrier is denying or granting the benefits requested.
 - Any order or written decision must state the basis of the administrator's decision; it is inadequate to state in an order or decision that a request is denied without also stating the basis of that decision. [§23-5-1(a)]
 - Any order or written decision which pronounces a final action must give notice to the parties of the time allowed for filing a protest to the finding. Below is an example of an appropriate protestable clause. [§23-5-1(b)(1)]

The claimant may protest this decision within 60 days from the date of receipt of this order. The claimant must send a written protest, along with a copy of this decision, to the Office of Judges, P.O. Box 2233, Charleston, WV 25328-2233, and must serve a copy of any protest upon all parties to this claim.

- A copy of the order or written decision must be sent by the administrator to all the parties to the claim.
- Any protest filed by a claimant to an order or written decision must be served by the claimant upon all parties to the claim. While it is a claimant responsibility under West Virginia Code § 23-5-1(b)(1) to serve the protest upon all parties, the OIC considers it advisable for the administrator to include this guidance in the protestable clause and has added it to the sample clause above.

Again, you should direct this notice to those in your company who administer claims or supervise those who do. The information in this notice should be included in your company's training activities. The OIC, as the regulator of the insurance industry and administrator of the workers' compensation system in our state, is a valuable resource and we encourage all carriers, TPA's and self-insured employers to consult with our legal division any time an adjuster is uncertain about specific legal requirements. Although we cannot provide legal advice specific to a claim, we can share our expectations as a regulator on the requirements of statutes and rules. In addition, you should be familiar with any resources available through the OIC's website, including informational letters and existing and proposed administrative rules governing the workers' compensation system.

Thank you for your attention to this notice. We hope to continue to improve our workers' compensation system for the benefit of all employers, workers and other stakeholders.

Michael D. Riley

Michael D. Riley
Acting Insurance Commissioner