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Insurance Commissioner denies proposed workers' comp rates; sets new rate of 13.1 percent

FRANKFORT, Ky -- Insurance Commissioner Janie A. Miller announced today that she is disapproving the filing from an advisory organization expected to be used by most carriers to develop rates for workers' compensation insurance.

The filing by the National Council on Compensation Insurance, Inc. (NCCI) requested an average increase of 20.5 percent for non-coal classes. The filing was the subject of a public hearing on August 13.

Miller issued an order today denying that request and setting the average non-coal class increase at 13.1 percent. The order approves an amended filing requesting a 3 percent loss cost for coal classes and a 6.4 percent revision for "F" classes.

Commissioner Miller said, "While it is apparent that an increase is needed for non-coal classes, as Insurance Commissioner I needed to balance the stability of the market with responsiveness to changing conditions. It is important to avoid overreacting to variations in the data that were due to random noise and not a change in conditions."

This rate includes both the cost of anticipated indemnity, which is lost wages based upon level of disability, and medical benefit payments. (Indemnity and medical benefit payments are collectively known as loss costs.) Insurance companies may use the loss costs as a basis to which their own loss adjustment and overhead expenses are added to arrive at the final manual rates charged to Kentucky employers.

The decision to disapprove the non-coal filing came following a comprehensive review of data using complex methodologies including actuarial and socio-economic perspectives. Data was supplied by NCCI and the Kentucky Department of Workers' Claims (DWC), and obtained from the Aug. 13 public hearing, as well as a presentation made at a recent meeting of the Interim Labor and Industry Committee. The data was extensively analyzed by DOI staff, as well as by an outside actuarial firm.

The order cites four reasons justifying approval of an increase, although less than the one requested. Those are:

1. Increased medical losses due to rising medical costs and increased utilization. Although the number of claims currently is easing and lost wage benefits show some stabilization, historical claims experience shows that those being filed require more costly and lengthy treatment. While information shows that managed care costs have remained flat, it is also noted that overall participation in such programs dropped to 30 percent in 2002 from 41 percent in 1998. This decrease in employee participation in managed care programs, which would assist in cost containment, supports an overall increase in the cost for medical services. Fee payment schedules for hospitals, prescription drugs and other services balance quality medical care with reasonable cost containment but also allow a pass-through of cost increases.
2. Total system costs have increased for the last two years. Data presented at the hearing attributed a higher-than-anticipated cost to the passage of HB 992 during the 2000 legislative session. This bill made a number of changes to the workers' compensation system, including increasing permanent partial disability and lump-sum death benefits for workers. Total system costs increased 14.74 percent in 2001 and another 10.34 percent in 2002.

3. The American Medical Association guidelines for evaluating percentages of disability have increased overall with additional compensation available for pain. While the estimated impact of the new fifth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment was estimated at 1 percent, the observed impact has been as much as 5 percent. Disability ratings for some injuries or disease processes have been evaluated higher in the new edition of guidelines than in the fourth edition. The higher ratings lead to higher awards to claimants who suffer from these specific injuries or diseases.

4. More attorneys are involved in workers' comp cases. According to data provided during the hearing, total plaintiffs' attorney fees increased from just over \$13 million in fiscal year 2000 to \$21.8 million in fiscal year 2003.

"With workers' compensation costs at this level, the insurance industry will need to become more efficient in the delivery of benefits. Public policy makers will want to reexamine the role of managed care in workers' compensation, look at fee schedule cost pass-throughs and consider other cost containment initiatives to assure rising healthcare costs do not undermine the ability of the Commonwealth to provide adequate benefits to injured workers," Miller said.

The 13.1 percent increase will become effective on September 12, 2003.

Editors, reporters – A copy of the order is available at <http://doi.ppr.ky.gov/kentucky/> or by calling 502-564-6098.