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June 27, 2013

**DCRB CIRCULAR NO. 886**

To All Members of the DCRB:

Re: **HOUSE BILL 175 - AN ACT TO AMEND TITLES 18 AND 19**

**OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION**

The Delaware General Assembly has passed and on June 27, 2013 Delaware Governor Jack Markell has signed House Bill 175 (HB175). This legislation makes changes to the Delaware Workers Compensation Act. This Act implements the legislative recommendations of the Workers' Compensation Task Force, which was created by House Joint Resolution 3 and charged with recommending improvements to Delaware's workers' compensation system. The legislative synopsis accompanying HB175 reads as follows:

Section 1 of the Act expands the responsibilities and resources of the Data Collection Committee, which is overseen by the Department of Insurance. The section provides the committee with more frequent updates on medical cost drivers for the Delaware workers' compensation market as a whole, and allows the Committee to review company-specific medical cost information and direct examinations of companies that do not appear to be exercising sufficient oversight over medical costs.

Section 2 of the Act implements a number of changes to Delaware's medical cost control provisions for workers' compensation recipients, including a two-year inflation freeze on fees that would otherwise be entitled to an annual inflation increase, a reduction in the annual inflation increase allowed for hospitals treating workers' compensation patients (which exceeded the inflation increase allowed for other providers), inclusion of many procedures on the state's current medical fee schedule which were previously exempted, and new cost control provisions for pharmaceuticals, drug testing, and anesthesia.

Section 3 of the Act imposes more responsibility on insurance carriers to ensure that employers are complying with their responsibilities to provide doctors with a complete list of job opportunities that an injured employee might be able to fill while still unable to perform his or her previous job.

Section 4 of the Act creates a statute of limitations for parties who wish to appeal a utilization review decision. The Delaware Supreme Court recently ruled that such a statute of limitations must be created by statute and not by regulation.

Section 5 of the Act makes three changes to Delaware's workplace safety credit program: it requires that the program be more rigorous with respect to inquiring about past injuries in a workplace before awarding the credit, it allows insurance company safety inspections which are at least as rigorous as those performed by the Department of Insurance to substitute for the Department's inspections, and it requires that companies be compliant with their 'back to work' responsibilities for injured employees before being eligible for the credit.

Section 6 of the Act provides the Data Collection Committee with the authority to direct the examinations called for in Section 1 of the Act.

Section 7 of the Act reforms the procedure used to scrutinize industry-wide rate requests submitted by the workers compensation insurance industry, creating an advocate in the rate-setting process for Delaware businesses and establishing a process where that rate advocate can gather the information necessary to advocate for businesses and effectively present their arguments with respect to rates to the hearing officer making recommendations to the Department of Insurance.

Section 8 of the Act requires that both the workers compensation industry and the Department of Insurance specifically consider each of the reforms created by this Act and by new regulations accompanying this Act when setting rates in 2013.

Section 9 of the Act continues the existence of the Workers Compensation Task Force so that it can chart the impact of the reforms it recommended and make further recommendations for cost savings as necessary.

Section 8 of HB175 requires the DCRB to submit a filing explicitly and individually accounting for the impact of any statutory changes in HB175, Senate Bill 238 of the 146th General Assembly and any regulatory changes proposed by the Health Care Advisory Panel within 60 days of the enactment of HB175. The DCRB is required to submit that filing within 90 days of the enactment of HB175. The effective date of HB175 is its date of signature, June 27, 2013. The DCRB has been and is preparing its December 1, 2013 rating value filing. That filing will comply with provisions of HB175.

Complete text of House Bill 175 may be found at the following link:

[http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/HB+175/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/HB+175/$file/legis.html?open)

Please contact Bruce Decker, Senior Vice President, at (302) 654-1435, Extension 4411 or [bdecker@dcrb.com](mailto:bdecker@dcrb.com) with any inquiries pertaining to the subject matter of this circular.

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