



November 17, 2008

Circular 2008-12

Claims and Loss Data Reporting

Introduction

There have been allegations that unspecified participants in the workers compensation insurance industry are not properly reporting claims and loss data. While the ICRB has not verified or investigated these allegations, failure to properly report claims and loss data is sufficiently important that the ICRB and the Indiana Department of Insurance concluded that a circular should be issued to all participants in the workers compensation industry addressing these allegations. Thus, this Circular is being distributed to producers, insurance companies and other interested parties.

Nature of Allegations

Various allegations have been made which may be collectively categorized as failure to report claims and loss data. These allegations are not limited to Indiana or to any particular segment of the industry. They include employers not reporting injuries and related medical treatment to insurers, producers encouraging clients not to report data or injuries, and finally, insurers permitting insureds to directly pay claims while only reporting the occurrence of an injury but not any associated losses or claim amounts.

Potential Implications

Failing to report data is a serious matter with significant implications. Statistical data is critical to rate making. The reliability and amount of data directly correlates to the credibility of advisory rates prepared by the ICRB. The establishment of reasonable advisory rates and loss costs, as well as assigned risk rates, requires complete and accurate data. The credibility of the data could be subject to challenge if significant data is being withheld by any segment of the industry.

There are numerous examples of how faulty or inadequate data can affect the system. Examples include the following:

1. The practice of employers paying claims directly out-of-pocket, especially in a large deductible scenario, could have an impact on an employer's Experience Rating Modification ("Mod"). An inaccurate Mod could give an employer an unfair advantage in bidding on major contracts. From a legal perspective, this practice might subject the insurance carrier/employer to unfair trade practice allegations.

2. Also, as many project owners and construction managers use the Mod as a barometer of the contractor's attention to creating safe workplaces, reliance on the Mod for this purpose could be unreliable.
3. Finally, the system already includes incentives to encourage the reporting of data. For example, the Experience Rating Plan discounts medical only data by seventy percent (70%). This rule was adopted to minimize medical losses' impact on an employer's Mod. The hope was that the information would be accurately reported if employers and producers realized the impact on the Mod would not be significant. If data is still not reported accurately, regulators may be compelled to take more aggressive steps to collect data and penalize violators.

Legal Requirements

There are various rules, regulations and statutes ("Rules") relating to reporting of claims and loss data. These Rules apply to employers, producers and insurance companies. The following is a summary of some of the relevant Rules:

1. Every employer is required to keep a written record of all injuries to employees received during the course of their employment. Ind. Code §22-3-4-13;
2. The employer must report these injuries to its insurance carrier, or if self insured, to the Workers Compensation Board if the injury results in death or workplace absence of one day or more. *Id.*;
3. Insurance carriers are required to report all loss and claims data to the ICRB. Ind. Code §27-7-2-1.1(4) and §27-7-2-20;
4. Producers have a duty to comply with all laws and cannot lawfully discourage employers from complying with laws relating to properly reporting loss data to their carriers. Ind. Code §27-1-15.6-12(b);
5. The employer is instructed to tell the insurance carrier "at once if injury occurs that may be covered by this policy." The standard Workers Compensation and Employers Liability Insurance Policy, Part Four; and
6. Insurance carriers are required to report losses at their full value. The Statistical Plan Manual, Part 4, Rules B-1 and C-1.

Penalties

Indiana law provides any array of penalties for failing to properly report claims and loss data or counseling or encouraging others not to properly report claims and loss data. These penalties may include the following:

1. An employer who fails to report injury data to the Workers Compensation Board commits a Class C infraction. Ind. Code §22-3-4-13(d);

2. A prosecutor may bring criminal charges against an employer. Ind. Code §22-3-4-13(e); and
3. The Indiana Department of Insurance may suspend or revoke licenses of carriers and producers for statutory violations. Ind. Code §27-7-2-38 and §27-1-15.6-12(b).
4. The Indiana Department of Insurance may also impose monetary fines from One Thousand Dollars (\$1,000.00) to Ten Thousand Dollars (\$10,000.00) for violation of statutes. Ind. Code §27-7-2-38(b).

Future Action

While no specific future action is contemplated at this time, the ICRB has consulted with the Indiana Department of Insurance on this matter. To the extent the ICRB and/or the Indiana Department of Insurance concludes there is a material problem with loss and claim data reporting, the following action would be taken by the Indiana Department of Insurance or its appointee:

1. Conduct an investigation to verify allegations made against an alleged violator;
2. To the extent allegations are confirmed, impose significant penalties including monetary sanctions; and
3. Referring the matter to local prosecutors for consideration of prosecuting the responsible party.

The ICRB, together with the Indiana Department of Insurance, is also considering adopting additional rules further clarifying and reinforcing reporting obligations.

Accurate reporting of claims and loss data is critical to the proper functioning of the workers compensation system. Indiana has always served as a model state. Proper reporting is essential to maintaining Indiana's highly regarded position within the workers compensation industry.