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New York -- Loss Costs Rise 4.5% 2 Years after Spitzer Reforms: Top [07/20/09]

The New York State Insurance Department has approved a 4.5% increase in workers' compensation loss costs in a reversal of downward trends credited to former Gov. Eliot Spitzer's 2007 reform package.

Last Wednesday, Acting New York Insurance Superintendent Kermitt Brooks approved recommendations by the New York Compensation Insurance Rating Board (NYCIRB) that loss costs be increased by 4.5% effective Oct 1.

Included in the changes, approved by the New York State Insurance Department, is an increase to the assessment on standard workers' compensation premiums from 13.4% to 14.2%.

The assessments go to pay the administration expenses of the New York State Workers' Compensation Board (SWCB) and to retire claims filed with the Special Disability Fund, the state's second injury fund. The Spitzer reforms closed the fund to new claims on July 1, 2007.

Under an overhaul of the rating making system implemented last year, NYCIRB files loss-cost requests for NYSID approval. Carriers must now file loss-cost multipliers based on their overhead, dividends and other factors by Aug. 1 to obtain specific rates.

Following a series of sweeping workers' compensation reforms signed into law by Spitzer on March 13, 2007, rates dropped by 20.5% effective Oct. 1, 2007.

Under the new system used last year, loss costs dropped by 6.5% and rates dropped about 5%.

Hampton Finer, NYSID deputy insurance superintendent and chief economist, said the changes cover loss experience for 2007 and part of 2008.

He said the boost in loss costs reflects one key component of the reforms that took effect soon after Spitzer signed the reforms into law.

Passed as A 6163, the reform package raised the cap on maximum weekly benefits for the first time since 1992. The cap was boosted to \$500 in 2007 and has been increasing in increments.

It will permanently be set at two-thirds of the state's average weekly wage beginning next year.

"A big chunk of (the increase) is because of rising benefits," Finer said. "The frequency and costs trends are pretty much flat."

But Finer also credited major slumps in New York's economy beginning in 2007 and leading up to Wall Street's meltdown last September.

"I think a lot of it is the economy. Historically, workers' compensation costs rise in a bad economy," he said. "Unfortunately, workers may file a compensation claim before they get laid off."

The impact of recessions on workers' compensation claims is a topic of widespread debate. In a recent study of the recession by the National Council on Compensation Insurance (NCCI), the Boca Raton, Fla.-based rate maker predicted the recession would put downward pressure on claims frequency.

The study indicated that new employees tend to sustain more injuries, and recessions discourage new hiring and tend to keep veteran workers in place.

NYCIRB Vice President and Chief Actuary Martin Heagen said Friday that the rise in the weekly benefit cap has played a significant role in the increase.

"We saw a slight deterioration in carriers' experience," Heagen said.

NYCIRB saw claims frequency – the number of claims compared to the size of the work force – drop by 1.5% annually during the period examined.

But indemnity severity and medical severity – the cost of benefits per claim – rose by a combined 5%.

"It's debatable whether claims frequency increases because of a depressed economy," Heagen said. "We've seen a decline in frequency, and it's still going down."

Among the key negotiators in the Spitzer reform package was the Business Council of New York State.

Michael Moran, the council's director of communications, said Friday the boost in benefits was meant to be balanced by two key cost-cutting moves: a new set of impairment guides and the state's first set of medical treatment guidelines.

Although a workers' compensation reform task force formed by Spitzer recommended new treatment guidelines to SWCB in December 2007, the board has yet to act on them.

The task force still is working on drafting a new set of New York-specific impairment guides.

"I think it's unfortunate," Moran said of the loss-cost increase. "But it's the result of the failure to implement the real reforms in terms of objective medical treatment guides and objective guidelines for impairment."

"We've told both the board and the department (NYSID) that these really need to get done," Moran said.

The claimants' bar also has been critical of the failure to enact the missing pieces of the reform package.

As a trade-off for lifting the cap on maximum weekly benefits, the reforms also imposed the first cap on the duration of payments for permanent partial disability (PPD).

Brian Mittman, cochairman of the New York Workers' Compensation Alliance, said Friday that determining the loss of wage-earning capacity in PPD cases without the new impairment guides has become a guessing game for attorneys and compensation judges.

The state is relying on a set of 1996 New York impairment guides that stakeholders agree is outdated.

"You can have permanent partial disability awards, but you've also got to determine loss of wage-earning capacity," he said. "Nobody knows what that means without the impairment guides. The impairment guides are the real problem."

As one of his last official acts, outgoing SWCB Chairman Zachary Weiss hired Dr. Stephen Levin, head of the World Trade Center responder diagnosis and treatment program for Mt. Sinai Medical Center, as the board's interim medical director.

Attorneys and NYSID officials say Levin's appointment was key to completing the treatment guidelines. NYSID has not set established a timetable for completing the impairment guides.

Finer agreed that completing the guidelines will improve the system and should help control loss costs.

"Rates go up and down. There have always been ups and downs because of experience and the economy," he said. "We consider this a relatively routine rate adjustment. We're not troubled by it, and we don't think this has anything to say about the reforms."

NYCIRB has not released loss-cost impacts for specific industries or a complete analysis of the factors driving the increase. Heagen said those details should be posted on NYCIRB's website at <http://www.nycirb.org/> within two weeks.

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