



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
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April 6, 1999

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INDEPENDENT REGULATORY
REVIEW COMMISSION

VIA FACSIMILE AND HAND DELIVERY

Mary S. Wyatt, Chief Counsel
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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Re: Special Funds Assessment Regulations;
IRRC Regulation #1978

Dear Ms. Wyatt:

I write in response to the attached letter from Mr. Patrick T. Beaty, Esquire to the Honorable Joseph M. Gladeck, Jr. dated March 30, 1999¹. Therein, Mr. Beaty raises some concerns regarding the Department's Special Funds Assessment Final Form Regulations (IRRC Regulation # 1978; Tracking No. 12-53). Preliminarily, I note that Mr. Beaty neither commented on the regulations as proposed nor offers any concrete alternatives to the pending rulemaking in his letter.

Mr. Beaty contends that no regulation is necessary to effectuate the provisions of Act 57 of 1997 (Act 57). The express language of Act 57, however, directly contradicts this assertion. Act 57 clearly indicates that the legislature recognized the desirability of regulations to effectuate its provisions by stating that the assessments were to be accomplished "in accordance with regulations promulgated by the Department of Labor and Industry." See 71 P.S. § 578.

Additionally, Mr. Beaty contends that no regulation is necessary to accomplish a pass-through assessment because insurers had already been passing the costs of assessments on to employers. Mr. Beaty is correct in noting that insurers historically passed the costs of assessments onto employers, just as any business passes its operating expenses on to its customers in the form of higher prices. Act 57, however, called for a more direct remittance and collection process, which the Department has developed in conjunction with the regulated community.

Mr. Beaty also argues that Act 57 did not repeal section 446 of the Workers' Compensation Act, 77 P.S. §1000.2. In conjunction with this argument, Mr. Beaty provides an alternative reading of Act 57, suggesting that the Bureau impose assessments on employers. However, such a system

¹ The arguments contained in Mr. Beaty's March 30 letter are the same arguments advanced in his March 31 letter to Chairman John R. McGinley, Jr.

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is not supported by Act 57, which requires that both collection and imposition of assessments, along with remittance of assessments, be accomplished *through* insurers. Mr. Beaty's suggestion is also impracticable and unworkable because it would require the Bureau to bill approximately 250,000 employers for the assessments.

Ironically, after arguing that "[n]o change in law or regulation was needed to *accomplish* the pass-through [assessment]," Mr. Beaty argues that the Department's regulations do not go far enough in regulating the relationship between insurers and employers. Mr. Beaty states that "[a]bout the only thing the regulation has to say on that subject is that L&I is delegating that responsibility to the insurance industry."

In response, I note that it is the "approved rating organizations" (i.e., the Pennsylvania Compensation Rating Bureau (PCRB) and the Coal Mine Compensation Rating Bureau (CMCRB)), not the Department, that are statutorily obligated, with the approval of the Insurance Commissioner, to set rules relating to the appropriate rates and premiums. See 77 P.S. §§1035.1-22. It is the PCRB and CMCRB which have historically calculated the amount by which assessments should increase premium. Additionally, the system described in the regulations is an efficient mechanism supported by representatives of the regulated community, and the rating organizations themselves.

In addition, Mr. Beaty's argument that the regulations be disapproved because they are effective July 1, 1998 is without merit. The express language of Act 57 requires that assessments issued on and after July 1, 1998 be imposed, collected and remitted through insurers in accordance with regulations promulgated by the Department.

Finally, I note that the Bureau's pre-regulatory actions should have no bearing on an analysis of the pending regulations' statutory authority or the intention of the General Assembly. Mr. Beaty has appealed assessments issued under Act 57 of 1997 on behalf of a handful of insurers. Those appeals are currently pending before the Department, and his arguments regarding those assessments will be properly addressed therein.

Thank you for your consideration of this matter. I look forward to meeting with you at the public meeting scheduled for April 8.

Very truly yours,



Thomas J. Kuzma
Deputy Chief Counsel

cc: Sheilah Borne, Director, Legislative Affairs
Donald Smith, Deputy Secretary for Compensation and Insurance
Fiona Wilmarth, Regulatory Analyst
Thomas Howell, Assistant Counsel