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Elizabeth A. Crum, Director
Workers' Compensation Office of Adjudication
1010 North Seventh Street
Harrisburg, PA 17102

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Re: Proposed revisions to Chapters 111 and 131 of Title 34

Dear Director Crum:

The Insurance Federation, on behalf of its member companies providing workers compensation coverage in Pennsylvania, offers the following comments on the Department of Labor and Industry's proposed revisions to these chapters, as published in the February 22 **Pennsylvania Bulletin**.

**Chapter 111 – Special Rules of Administrative Practice and Procedure
Before the Workers' Compensation Appeal Board**

Section 111.11(a)(1): We question the proposed added language that an appeal from a workers' compensation judge's decision is deemed to include all claims, disputes and petitions referenced in the decision and related order.

Does this mean there can be no partial appeals? What happens if a party wants to appeal only an award of penalties or attorney's fees, or only part of a judge's findings – as with a decision on multiple medical treatments that affirms some but not all of the treatments? There may be situations when a complete appeal of a judge's ruling is filed; but there are also those where a partial appeal is in order – so we question the reasoning, need and value of the proposed restriction that all appeals be deemed to include all parts of the judge's order.

Chapter 131 – Special Rules of Practice and Procedure Before Workers’ Compensation Judges

Section 131.5: “Party:” We are confused by the addition of “employee.” First, unlike the other entities listed, it is not defined in this section. Second, it may already be covered in the definition of claimant. Further explanation would help.

Section 131.11: We recommend this be consistent with the filing revisions in Section 111.3, including the adoption of the provisions for common carriers. In any event, it would help to know what, if any, differences the Department envisions in the filing requirements of the two chapters and the reasons for such differences.

Section 131.33(a): We are confused by the proposed distinction between claims petitions and all other petitions, as Section 416 of the Workers Compensation Act and the current regulation do not make such a distinction – and we don’t see the difference in timing or process in the proposed revision. We also are not sure why reviews of Utilization Review determinations are being added to the exceptions of petitions for joinder and challenge proceedings, so further explanation will help.

Section 131.53b: We endorse allowing the filing of motions for summary disposition but recommend more clarity in what will be a significant change. What motions does the Department envision “may [or may not] result in summary disposition of a claim”? Are they to be designated as such? Should such motions have any particular requirements? And how does the process for resolving such motions unfold beyond what is set forth here – as with opportunities for a reply during the initial 45 days?

This seems a significant change. Again, it makes sense – but needs more clarification so it will be used, implemented and understood by all parties (including judges) in a consistent manner.

Section 131.55b: The reference to “claim” in the proposed subsection (a) should be clarified. The subsection refers to a claim; a claim for disbursements, costs and expenses; and a claim for fees or other disbursements, costs or expenses. We think it is the last one that controls, but that should be clarified.

Section 131.81: With requests for a subpoena, we are confused on the timing. We recommend the Department explain, in allowing objections within seven days of the date of the request, how that date is determined. Is it consistent with the rules set forth in Section 131.11 regarding filing dates, or something different?

Section 131.91: We are confused by the proposed addition of a signature requirement for certain stipulations. This speaks of only stipulations that are dispositive of the case – what stipulations does the Department envision falling inside and outside that scope? Further, why should a claimant be required to sign and date a stipulation if he is represented by counsel (the same is not required of employers)? And what of cases, as in utilization review petitions, where the claimant – or at least the one filing the petition – is not the injured worker? What is the purpose of the signature requirement there?

We support the underlying effort here, and these comments are mainly for further clarity and refinement. We understand the Department engaged in a long process, but also note insurers were lacking from it (the defense bar is not always the same). We recommend future projects include insurers as well as other stakeholders.

We also note with support that many of these changes eliminate needless duplications. Many of them match those we are jointly pursuing in getting rid of needless statutory duplications created by the Department’s conversion to its Electronic Data Interchange. We hope positive comments from a wide array of parties on these proposed changes will allay any legislative fears of our joint effort on the statutory front, so we look forward to comments from others that will be filed today with the Department and the IRRRC.

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Thank you for the opportunity to comment. We look forward to working with the Department and others to resolve the above concerns and implement these changes.

Sincerely,

Samuel R. Marshall

C: Fiona Wilmarth, IRRC