



May 19, 2023

Marianne H. Saylor, Esq.
Director, Bureau of Workers Compensation
651 Boas Street, 8th Floor
Harrisburg, PA. 17121

Re: Proposed Rulemaking – 34 Pa. Code, Chapter 123 – Impairment Rating Evaluations

Ms. Saylor:

On behalf of our workers compensation carriers, the Insurance Federation of Pennsylvania writes to express a position of neutrality on the Bureau's proposed amendments to **34 Pa. Code, Chapter 123, Subchapter B** – regulations governing the Impairment Rating Evaluation (IRE) process.

The consensus of our membership is that the proposed regulatory amendments appropriately align IRE regulations with updates to the Workers Compensation Act effectuated by **Act 111 of 2018**.

The proposed amendments also conform IRE regulations to recent case law regarding the timing of IREs and whether the relief, if appropriate, is automatic (**Gardner v. WCAB**); whether an employer may designate the IRE physician for a second IRE (**Lewis v. WCAB**); and the employee's basis for appeal of the adjustment of benefit status during the employee's receipt of 500 weeks of partial disability status (**Johnson v. WCAB**).

While the proposed amendments are not objectionable, we offer the following technical comments for the Bureau's consideration:

- **§123.102(a)**: The Bureau uses the term "total disability benefits." We recommend using the term "total disability compensation benefits" as used in §511.3(2).
- **§123.102(a) and (f)**: The Bureau uses the term "traditional administrative process." Although this language appears in case law, we question the use of this undefined term in the regulation. We note that the existing §123.105(f) does not incorporate this term.
- **§123.102(a) and (f)**: Both of these subsections address a IRE beyond the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits. Subsection (a) uses the term "adjustment of the disability status", while Subsection (f) speaks to the reduction of benefits. We recommend using consistent terminology.

- **§123.105(d.1). Impairment rating determination:** For the sake of consistency, we recommend changing “adjustment of the employee’s disability status” to “adjustment of the disability status” (as used in §123.102). The term “Petition for Modification” should also be capitalized.

Thank you for the opportunity to provide feedback on the Bureau’s proposed rulemaking. We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan C. Greer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jonathan C. Greer, President & CEO
Insurance Federation of Pennsylvania