

PENNSYLVANIA COMPENSATION RATING BUREAU

Evaluation of House Bill 1840 of 2017

The exhibit provides a discussion of the analysis of Pennsylvania House Bill 1840 of 2017 (HB 1840), which became law on October 24, 2018. This legislation was enacted in response to the Pennsylvania Supreme Court decision in *Protz v. WCAB (Derry Area School District)* (Protz decision).

The discussion is organized by the following topics:

- Summary of the Protz Decision
- Summary of HB 1840
- Overall Impact of HB 1840
- Impact of the Reinstatement of Impairment Rating Evaluations (IREs)
- Impact of the Increase in Burial Benefits from \$3,000 to \$7,000
- Adherence to Actuarial Principles and Standards of Practice

**SUMMARY OF THE PROTZ DECISION**

On June 20, 2017, the Pennsylvania Supreme Court issued its decision in *Protz v. WCAB (Derry Area School District)*, Nos 6 WAP 2016, 7 WAP 2017, holding that Section 306(a.2) of the Workers' Compensation Act (77 P.S. § 511.2) is an unconstitutional delegation of legislative authority. The Court concluded that the entirety of Section 306(a.2) was unconstitutional. Specifically, the Court upheld the Commonwealth Court order declaring that the portion of the Act requiring physicians to apply the methodology set forth in “the most recent edition” of the American Medical Association *Guides to the Evaluation of Permanent Impairment* violates the constitutional requirement that all legislative power “be vested in a General Assembly which shall consist of a Senate and a House of Representatives.”

On June 21, 2017, the Pennsylvania Department of Labor & Industry, Bureau of Workers' Compensation announced that, effective immediately, the Bureau of Workers' Compensation would no longer authorize physicians to perform Impairment Rating Evaluations (IREs).

**SUMMARY OF HB 1840**

As noted above, in the Protz decision, the Pennsylvania Supreme Court concluded that the entirety of Section 306(a.2) was unconstitutional. This meant that the criteria related to an employee's impairment rating was no longer available to determine whether an employee was considered totally disabled and could receive total disability compensation benefits.

HB 1840 reinstates the use of IREs in determining whether an injury was classified as Permanent Total or Permanent Partial. However, the impairment threshold percentage to determine permanent disability was reduced from 50% to 35% as a result of the legislation.

Further, the legislation increases the burial benefits for claimants from \$3,000 to \$7,000. When an employee in Pennsylvania dies from a work-related illness or injury, the employee's spouse, children, and other dependents may be eligible for death benefits under the state's workers compensation laws. Pennsylvania workers compensation insurance includes burial benefits as part of its death benefits, and, under the new law, pays the family of an eligible worker up to a \$7,000 burial benefit.

### **OVERALL IMPACT OF HB 1840**

The PCRB performed an analysis of HB 1840 to determine its effects on workers compensation loss costs. The calculation of the effect of HB 1840 is summarized in **Exhibit 1**. Based on the analysis, it is estimated that the impact on indemnity loss costs would be a decrease of 10.42% due to the reinstatement of IREs and an increase of 0.03% due to the increase in burial benefits. The impact on overall indemnity loss costs would be decrease of 10.39% and an overall reduction in loss costs of 5.24%.

### **IMPACT OF REINSTATEMENT OF IMPAIRMENT RATING EVALUATIONS (IREs)**

The Pennsylvania Department of Labor and Industry provided the PCRB with data for over 9,500 IREs submitted during 2009 through 2017. The IRE data is shown in **Exhibit 3**.

**Exhibit 3** also includes the calculation of a factor of 3.227, based on the IRE data, which represents the increase in the number of IREs, when the impairment threshold percentage is reduced from 50% to 35%.

The top half of **Exhibit 2** shows the same claim count and average severity data by injury type as was presented in PCRB Filing C-369, the Protz filing. This data reflects an impairment threshold percentage for Permanent Total claims of 50%, which was in effect prior to the Protz decision. The bottom half of **Exhibit 2** shows the same average severity data by injury type as the top half of the exhibit. However, the Permanent Total claim counts have been adjusted by the 3.227 factor from **Exhibit 3**. The claim counts for Major, Minor and Temporary Total have been changed to reflect the same distribution of the number of claims that were changed from Major, Minor and Temporary Total claims to Permanent Total claims as a result of the Protz decision as seen in PCRB Filing C-369, the Protz filing.

### **IMPACT OF THE INCREASE IN BURIAL BENEFITS FROM \$3,000 TO \$7,000**

The Pennsylvania Workers Compensation Act provides benefits to workers who die in the course and scope of their employment. Prior to the passage of HB 1840, the family of an eligible worker received a percentage of the deceased worker's salary and up to a \$3,000 burial benefit.

With the passage of HB 1840, the maximum burial benefit payable to the worker's designated beneficiary is increased to \$7,000.

To measure the impact of the increase in burial benefit, the PCRB examined the data collected from Individual Case Reports (ICRs), which carriers are required to submit for all Pennsylvania workers compensation claims involving death and permanent total benefits.

Using the ICR data, the PCRB identified 224 death claims with a \$3,000 burial benefit, 18 claims with other than a \$3,000 burial benefit and 189 death claims whose burial benefits were combined with the indemnity benefits with no separate detail. Based on this review, the PCRB concluded that the beneficiaries received the \$3,000 maximum for death claims.

Further, the PCRB looked to determine whether it was reasonable to assume that the \$7,000 maximum would be paid for future death claims. The previous burial benefit was set at \$3,000 in 1993 and, when adjusted for inflation, the benefit would have been approximately \$7,200. Also, the Calendar Year 2016 national median cost of a funeral with a viewing and burial was approximately \$8,500. Based on this information, the use of the \$7,000 assumption was appropriate.

The calculation of the impact of the increase in burial benefits is summarized in **Exhibit 4**. The distribution of death claims by policy year underlying PCRB Filing C-372, the January 1, 2019 loss cost filing, is shown in the upper portion of the exhibit. The entries for the last column, “Post-HB 1840 Death Benefits”, are computed as follows:

$$\begin{aligned} & \textit{Post-HB 1840 Death Benefits} = \\ & \textit{Pre-HB 1840 Death Benefits} + [\textit{Death Claim Count} \times (\$7,000 - \$3,000)] \end{aligned}$$

Therefore, the impact of the increase in burial benefit on total death benefits is estimated to be 1.40%. The death benefits shown in the upper portion of **Exhibit 4** were used in the lower portion of the exhibit, along with the unchanged loss dollars for the other injury types, to calculate an overall effect on indemnity loss of 0.032%.

#### **ADHERENCE TO ACTUARIAL PRINCIPLES AND STANDARDS OF PRACTICE**

A fundamental actuarial principle applicable to this memorandum is:

*“A rate is reasonable and not excessive, inadequate or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer.”*

The immediate impact of HB 1840 was an overstatement in current PCRB loss costs, which is the reason the PCRB has submitted this filing.

It is reasonable to conclude that, with the reinstatement of the IRE process (albeit at a reduced impairment threshold percentage), greater efficiency in determining the length of time over which benefits would be paid will result. In turn, claim closure rates are likely to increase on average, causing total indemnity benefits to be reduced.