



Pennsylvania Compensation Rating Bureau

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June 30, 2017

PCRB CIRCULAR NO. 1683

To All Members of the PCRB:

Re: PA SUPREME COURT PROTZ DECISION ELIMINATION OF USE OF A.M.A. GUIDELINES FOR IMPAIRMENT RATINGS

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's opinion makes clear that the entirety of Section 306(a.2) is 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 will no longer authorize physicians to perform Impairment Rating Evaluations. The courts did not specify how the ruling should be applied and leaves uncertainties around whether there will be in-part or in-full retrospective application.

This ruling will ultimately impact the PCRB's annual loss cost filing (generally effective April 1 of each year). The PCRB is actively reviewing the ruling and performing an actuarial analysis of the impact of its various provisions on system costs and rating values to the extent that such impacts can be credibly estimated.

The key provisions of the ruling eliminate a change to the Pennsylvania system that was put in place over 20 years ago. Since many of the cost saving provisions from Act 57 of 1996 remain unchanged, e.g., Compromise and Release, we are presented with challenges in accomplishing a prospective evaluation that focuses on isolating the impact of this decision on system costs. Accordingly, PCRB members having or being aware of informational resources that may be useful in estimating the effects this ruling are invited to contact the PCRB to discuss those resources.

In the near term, the PCRB will continue to notify members of significant developments related to data collection, impact estimates, loss cost filing(s) and implementation of this ruling as they occur via circular announcements.

Questions about this circular or the PCRB's efforts in response to this ruling can be directed to Bonnie Piacentino, Senior Vice President at 215-320-4456, or me at 215-320-4413.

William Taylor
President

WT/BP/jf

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