

# DEPARTMENT OF INSURANCE

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 2610 and 29 Delaware Code, Chapter 101  
(18 Del.C. §§311 and 2610 and 29 Del.C. Ch. 101)

### FINAL

### ORDER

#### **804 Workers Compensation Ratepayer Advocate**

Proposed Regulation 804 relating to Workers Compensation Ratepayer Advocate was published in the Delaware *Register of Regulations* on August 1, 2013. The comment period remained open until August 30, 2013. There was no public hearing on proposed Regulation 804. Public notice of the proposed Regulation 804 in the *Register of Regulations* was in conformity with Delaware law.

#### **SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Comments were received on the proposed Regulation 804 from the Delaware Compensation Rating Bureau, Inc. (DCRB). The collective comments were reviewed and considered, with minor changes being made to the proposed Regulation 804.

#### **FINDINGS OF FACT**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 Del.C. §§311 and 2610 of the Insurance Code requires a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed Regulation 804, with suggested amendments, best serve the interests of the public and of insurers and comply with Delaware law.

#### **DECISION AND EFFECTIVE DATE**

Based on the provisions of 18 Del.C. §§311 and 2610, and of 29 Del.C. Ch. 101, and the record in this docket, I hereby adopt proposed Regulation 804 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

#### **TEXT AND CITATION**

The text of proposed Regulation 804 last appeared in the *Register of Regulations* Vol. 17, Issue 2, pages 169-171.

IT IS SO ORDERED this 15th day of October, 2013  
Karen Weldin Stewart, CIR-ML, Insurance Commissioner

#### **804 Workers Compensation Ratepayer Advocate**

##### **1.0 Authority**

This regulation is adopted and promulgated in accordance with 18 Del.C. §311 and §2610 and promulgated under 29 Del.C. Ch. 101.

##### **2.0 Definitions**

“Advisory Organization” means the advisory organization designated by the Department pursuant to 18 Del.C. §2607.

“Attorney General” means the Attorney General of this State, or the Attorney General’s designee.

“Commissioner” means the Insurance Commissioner of this State, or the Commissioner’s designee.

“Department” means the Insurance Department of this State.

“Ratepayer Advocate” means a member of the Delaware bar appointed pursuant to 18 Del.C. §2610(e) and this regulation.

### **3.0 Purpose**

The purpose of this regulation is to implement the provisions of 18 Del.C. §§2610 (e), (f), and (g) regarding the Ratepayer Advocate who shall represent the interests of Delaware workers compensation rate-payers in connection with the filing of any application by the Advisory Organization with the Commissioner relating to rates or prospective loss costs.

### **4.0 Filings By The Advisory Organization Related To Rates Or Prospective Loss Costs**

At least forty-five (45) days in advance of filing an application with the Commissioner relating to rates or prospective loss costs, the Advisory Organization shall advise the Commissioner in writing of the Advisory Organization's intention to make such a filing and the anticipated date of the filing.

### **5.0 Selection of the Ratepayer Advocate.**

- 5.1 Within ten (10) days after receiving the notice prescribed in Section 4.1 hereof, the Commissioner, in consultation with the Attorney General, shall prepare and post on the Department of Insurance website a Request for Proposals ("RFP") for a Ratepayer Advocate with a closing date no more than fourteen (14) days after the date of initial posting of the RFP on the Department of Insurance website. The Commissioner may post the RFP in such other places as the Commissioner deems appropriate. The Attorney General may post the RFP on the Attorney General's website or in such other places as the Attorney General deems appropriate.
- 5.2 The RFP shall prescribe the professional qualifications that are necessary or desirable for persons seeking to serve as the Ratepayer Advocate. At a minimum, such qualifications shall include: (a) admission to the Delaware bar; (b) significant experience in matters related to insurance company regulation; (c) preferably experience in insurance rate proceedings; and (d) compliance with the Delaware Lawyers Rules of Professional Conduct guidelines on conflicts of interest. The RFP may specify other qualifications for the Ratepayer Advocate and contain such other provisions as the Commissioner, in consultation with the Attorney General, deems appropriate. In addition to any website or other postings of the RFP, the Commissioner and the Attorney General may encourage Delaware lawyers or law firms with offices in Delaware to submit timely responses to the RFP.
- 5.3 The Commissioner shall invite the Attorney General to participate in the review of any responses to the RFP, in interviews of applicants, and in negotiation of terms of retention of the Ratepayer Advocate. The Commissioner, with the consent of the Attorney General, shall enter into an agreement retaining the Ratepayer Advocate no less than 30 days prior to any hearing on the Advisory Organization's filing relating to rates or prospective loss costs.
- 5.4 The cost of the Ratepayer Advocate shall be borne by the Advisory Organization. The Ratepayer Advocate shall be entitled to charge a reasonable hourly rate acceptable to the Commissioner and the Attorney General, and to be reimbursed for reasonable expenses. Regardless of the approved hourly rate, the total amount charged by the Ratepayer Advocate for fees and expenses, during the course of the application (including any amendments thereto) and any appeals, shall be limited to \$40,000. Such amount may be adjusted by the Attorney General for inflation on an annual basis. The Ratepayer Advocate shall submit a statement or statements for fees and expenses to the Commissioner, who shall forward each statement to the Advisory Organization for payment.

### **6.0 Representation Of The Ratepayers By The Ratepayer Advocate**

- 6.1 The Ratepayer Advocate shall represent the interests of Delaware workers compensation rate-payers during the Commissioner's consideration of the application.
- 6.2 The Ratepayer Advocate shall select an actuary to work with him or her in review of the filing and to testify in any rate-setting proceeding. The selected actuary shall be an Associate or Fellow of the Casualty Actuarial Society, and shall have met the qualification standards of the American Academy of Actuaries for issuing a statement of opinion concerning workers compensation insurance. The actuary shall prepare a written report and statement of opinion evaluating the filing, which shall include a calculation of the appropriate increase or decrease in residual market rates and voluntary market loss costs and supporting analysis ("Report"). The Ratepayer Advocate shall provide a complete copy of the Report to the Commissioner, the Advisory Organization and any other party upon receipt of the Report from the actuary.
  - 6.2.1 The cost of this actuary shall be borne by the Advisory Organization. [The actuary shall be entitled to charge a reasonable hourly rate acceptable to the Commissioner and the Attorney General, and to be reimbursed for reasonable expenses.] The actuary shall submit a statement or statements for fees

and expenses to the Commissioner, who shall forward each statement to the Advisory Organization for payment.

6.3 Applications by the Advisory Organization relating to rates or prospective loss costs shall be subject to the case decision provisions of Title 29, Chapter 101, Subchapter III, of the Delaware Code, and the Ratepayer Advocate shall be considered a party to the case.

6.4 ~~The Advisory Organization shall provide to the Commissioner and the Ratepayer Advocate such documents and information as they may reasonably request in order to allow them to properly participate in review of the filing and in any hearing thereon. The Advisory Organization shall provide such information to the Commissioner and the Ratepayer Advocate within seven days of any request. The Advisory Organization shall provide such information in electronic format or by providing a link to information available on the internet, unless doing so would cause the Advisory Organization to incur undue expense.~~ Following the commencement of a case concerning an application by a workers compensation advisory organization relating to rates or prospective loss costs, the Department and the Ratepayer Advocate may request from the Advisory Organization, in writing, such documents and information as they may reasonably require in order to allow them to properly participate in review of the filing and in any hearing thereon. Unless the Advisory Organization, within seven days of its receipt of the request, objects in writing to the production of such documents and information, or responds in writing that it is not able to produce the documents and information within seven days of its receipt of the request, the Advisory Organization shall provide such information to the Department and the Ratepayer Advocate within seven days of its receipt of the request. The Advisory Organization shall provide such information in electronic format or by providing a link to information available on the internet, unless doing so would cause the Advisory Organization to incur undue expense. If the Advisory Organization objects to the production of such documents and information, or responds that it is not able to produce the documents or information within seven days of its receipt to any such request, the Department or the Ratepayer Advocate may request that the Hearing Officer, if one has been appointed, or otherwise the Commissioner, issue subpoenas for witnesses and other sources of evidence, in accordance with 29 Del.C. Chapter 101.]

6.5 If the ~~Commissioner~~ Department, the Ratepayer Advocate] or any other party retains an actuary who prepares a written report regarding the filing, the ~~Commissioner~~ Department, the Ratepayer Advocate] or other party[, upon receipt of the written report from the actuary,] shall provide a complete copy ~~of the written report upon receipt from the actuary thereof~~ to all other parties.

6.6 Pursuant to HB 175, Section 8 (enacted June 27, 2013) (the "Act"), the Advisory Organization "shall, within 90 days after June 27, 2013 [i.e. no later than September 25, 2013], file for approval by the Commissioner prospective loss costs that shall explicitly and individually account for the impact of any statutory changes in this Act or Senate Bill 238 of the 146<sup>th</sup> General Assembly, as well as any regulatory changes proposed by the Health Care Advisory Panel within 60 days of the enactment of this Act. Any order issued by the Department of Insurance relating to said filing shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section." In furtherance of this directive, and to assist the Commissioner in formulating the findings required by the Act, any report prepared by an actuary retained by the Department of Insurance or the Ratepayer Advocate "shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section."

6.7 The parties may enter into agreements to protect confidential, ~~private~~ or proprietary information. ~~In the event of any dispute between the parties concerning whether any information requested or subpoenaed is of a confidential, private or proprietary nature, the party from whom the information has been requested may request that the Hearing Officer, if one has been appointed, or otherwise the Commissioner, issue an order protecting the information from disclosure.~~

~~6.8 Any disputes regarding requests for information shall be presented to the Hearing Officer, if one has been appointed, or otherwise to the Commissioner, for resolution.~~

6.~~98~~ The Hearing Officer, if one has been appointed, or otherwise the Commissioner, may conduct such pre-hearing or other meetings and make such rulings as appropriate to simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, and aid in the prompt disposition of the matter. ~~Nothing in this Section 6.8 nor elsewhere in this Regulation 804 is intended to be inconsistent with the provisions and requirements of 18 Del.C. Chapter 26 or 29 Del.C. Chapter 101.~~

6.~~409~~ The parties on their own initiative may submit pre-filed testimony for some or all witnesses. The parties shall submit pre-filed testimony if directed to do so by the Hearing Officer, if one has been appointed, or by the Commissioner.

6.~~410~~ Nothing in these regulations shall preclude the parties from resolving any matter by voluntary agreement.

**7.0 Effective Date**

This Regulation shall become effective 10 days after being published as a final regulation.  
**17 DE Reg. 534 (11/01/13) (Final)**