



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

JOE MANCHIN III
Governor

JANE L. CLINE
Insurance Commissioner

October 2008

WEST VIRGINIA INFORMATIONAL LETTER

NO. 164

TO: All Insurance Companies Authorized to Sell Workers' Compensation Insurance in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications, Employers Authorized to Self Insure Workers' Compensation Risk pursuant to W. Va. Code § 23-5-9, and Other Interested Persons.

RE: Limitations on Reopenings Imposed by W. Va. Code § 23-4-16

Since the privatization of the workers' compensation market on January 1, 2006, questions have arisen regarding what limitations, if any, W. Va. Code § 23-4-16 imposes on the number of times a claimant may petition to reopen a claim for consideration of additional temporary total disability benefits. The purpose of this Informational Letter is to inform all interested parties of the Insurance Commissioner's interpretation and enforcement position as it relates to this issue.

Pursuant to W. Va. Code §§ 23-2C-22 and 33-2-21, the authority to enforce the existing rules of the West Virginia Workers' Compensation Commission ("WCC"), and to enforce the regulatory functions, powers and duties of the WCC as set forth in Chapter 23 of the West Virginia Code, transferred from the WCC to the Insurance Commissioner effective upon termination of the WCC. Prior to its termination on January 1, 2006, the WCC adopted Policy Statement No. CL4.02-01, which addressed limitations on requests to reopen claims for temporary total disability. The policy, adopted on October 1, 2003, provided:

W. Va. Code § 23-4-16(b) allows a claimant to make application for further period of temporary total disability as long as it is filed within the applicable time limits set forth in W. Va. Code § 23-4-16(a)(1) and (a)(2). The time limit is five years from the date of the TTD closure for all claims that closed with no award of permanent partial disability or closed without an initial order regarding permanent partial disability. The time limit is five years from the date of the initial award in claims where an award of permanent disability was made. **During this five-year period, the claimant is not limited to the number of times he/she can petition for additional TTD benefits.**

(Emphasis added).

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It has been determined that this Policy Statement of the WCC reflects the best statutory interpretation of W. Va. Code § 23-4-16 as it relates to reopenings for temporary total disability benefits. In keeping with this interpretation, any insurer transacting workers' compensation insurance in this State, any self-insured employer or employer group that is authorized to self administer claims pursuant to W. Va. Code § 23-2-9(b), and any third party administrator that is adjusting workers' compensation claims in this State shall immediately cease the application of any policy or procedure that impose a limitation on the number of times a claimant may petition to reopen a workers' compensation claim for the payment of temporary total disability benefits during the five-year period contemplated by W. Va. Code § 23-4-16(a)(1) and (a)(2).

Any questions regarding this Informational Letter should be addressed to Mary Jane Pickens, General Counsel, at 304.558.0401 or mj.pickens@wvinsurance.gov.

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