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FOLLOW-UP REPORT



A Review of the South Carolina Second Injury Fund

INTRODUCTION

This is a follow-up review of the audit, *A Review of the South Carolina Second Injury Fund*, released by the Legislative Audit Council in March 2007. This review was conducted to determine the extent to which recommendations presented in the 2007 report have been implemented. A copy of the original report can be obtained through the contact information on the back of this report.

Our 2007 audit found that the Second Injury Fund (SIF) is not needed and should be phased out. We found no evidence that the SIF has an effect on promoting the hiring and retention of the disabled. Also, we found that the Second Injury Fund does not protect employers from increased workers' compensation costs. The SIF primarily redistributes or shifts costs within the workers' compensation system and does not lower the overall costs of workers' compensation. Because of the SIF, the overall costs of workers' compensation are somewhat higher than if there were no SIF.

Our review of the Second Injury Fund's claims management did not identify problems. Evidence indicated that the SIF had adequate controls over claims processing and was efficient in claims handling.

During our follow-up review, we found that the General Assembly implemented the report's recommendations for statutory change. The General Assembly enacted legislation to phase out the Second Injury Fund and to improve controls over the reporting of Second Injury Fund reimbursements.

BACKGROUND

Members of the General Assembly requested that the Legislative Audit Council review the Second Injury Fund. The requesters wanted to know if the fund was meeting its goals and whether it should be continued. The SIF's goals are to advance the hiring and retention of the disabled and protect employers from increased workers' compensation costs. The requesters also wanted to know whether the SIF has handled claims efficiently and in compliance with the law.

The Second Injury Fund is a component of the workers' compensation system. The fund seeks to protect employers from potential higher costs of insurance they could incur by employing someone with a prior disability. State law requires the SIF to reimburse employers or their insurance carriers for workers' compensation benefits paid for an employee who has an injury that is substantially greater because of the employee's prior disability. The SIF is administered under the Budget and Control Board and is funded by assessments on insurers and self-insured employers.

RECOMMENDATIONS & CURRENT STATUS

- The General Assembly should review the results of the market conduct examination of the National Council on Compensation Insurance and, if warranted, amend state law to improve controls over the reporting of Second Injury Fund reimbursements.*

The General Assembly implemented this recommendation. Our 2007 audit found that there could be issues with whether insurers were adjusting their estimates of what a claim would cost once they knew that the SIF would be reimbursing the claim. There were also questions about whether they were reporting those changed estimates to the National Council on Compensation Insurance (NCCI), South Carolina's licensed advisory rating organization. If insurers don't report changed estimates, employers would lose their chance to pay a lower premium because of the reduction in losses that would have to be paid by insurance.

In the Workers' Compensation Reform Act (Act 111 of 2007), the General Assembly added provisions to strengthen controls over insurers' reporting. The act amended S.C. Code §42-9-400 to add requirements for the SIF to report all accepted claims on a quarterly basis to the NCCI, and for the NCCI to monitor and report to the Department of Insurance discrepancies between claims reported by the SIF and the claims adjusted by insurers.

2. *The General Assembly should enact legislation to phase out the Second Injury Fund by closing the fund to claims for injuries occurring after a specified date.*

The Workers' Compensation Reform Act added S.C. Code §42-7-320, which includes provisions to phase out the Second Injury Fund by closing the fund to claims for injuries occurring after July 1, 2008. The table shows the timetable mandated by §42-7-320.

SECOND INJURY FUND PHASE-OUT SCHEDULE	
EFFECTIVE DATE	EVENT / ACTION
07/01/08	No claims accepted with date of injury of July 1, 2008 or after.
12/31/10	Last day to submit notice of a new claim.
06/30/11	All data to either accept, compromise or deny a claim must be received by the SIF.
12/31/11	Last day for the SIF to accept a claim for reimbursement.
07/01/13	The SIF is terminated and all remaining obligations are transferred to the Budget and Control Board for the orderly winding down of the affairs of the fund and funding any remaining SIF liabilities.

3. *If the General Assembly does not phase out the Second Injury Fund, S.C. Code §42-9-400 should be amended to:*

- *Change the SIF's point of liability from 78 weeks to 104 weeks.*
- *Reduce the number of conditions considered pre-existing disabilities.*
- *Add a time limit for filing claims once the notice of intent to file has been submitted.*

Because our recommendation to phase out the SIF was implemented, the recommendation is no longer applicable.

This follow-up was limited to the issues in the 2007 audit for which we made recommendations. We reviewed legislation and received information from the Second Injury Fund and the Department of Insurance regarding the implementation of recommendations in the audit.

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