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John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

Re: Regulation # 12-54
Department of Labor and Industry
Workers Compensation Health and Safety

Dear Commissioner McGinley:

I am writing in support of the Proposed Rule Making on Regulation #12-54 concerning Workers' Compensation Health and Safety. These regulations are critical to the health and safety of all Pennsylvania workers. Insurers are often in the best position to provide accident and illness-prevention services, and this is particularly true for small employers.

The regulations follow the statutory language which require insurers to report to the Department of Labor and Industry accident and illness-prevention services "...offered or provided..." section 1001(e) of Act 44. This is proactive language. The services to be offered or provided are identified in subsection (a) and reported upon as required by subsection (e) of the statute.

After reviewing the comments submitted by the Alliance of American Insurers (AAI), it appears that their intent is to pervert the statutory language and attempt to allow insurers to avoid important responsibilities under the Act.

Specifically, the AAI argues that the language in subsection (a) which provides insurers "...shall maintain or provide accident and illness prevention services..." should be read as an escape of responsibility to either maintain or provide accident and prevention services. Clearly, the language is permissive for insurers to either have on-staff accident and prevention services or have the choice of providing these services under contract. This language of the Act should not be viewed as an escape from providing the services, but permissive in the manner in which the insurer provides these services.

In fact the statute requires insurers to report on services "...offered or provided..." Section 1001 (e) of Act 44. The AAI position would shift the obligation to employers to request services leaving insurers without any pro-active responsibility. AAI's interpretation of this language is clearly not the intent of the Act.

The AAI language also suggests that insurers may ignore employers who "...may need" ...accident and prevention services. Again, Section 1001 (a) of Act 44 provides that the insurers "...maintain (i.e. employ) or provide...an array of services including surveys, recommendations, training programs, consultations, analysis of accident causes, industrial hygiene and industrial health services." This array of services makes the insurer aware of the work sites with potentially serious health and safety programs and includes as provided in subparagraph (e) "offering" assistance.

Although it may be desirable to do more, the insurer is limited to "offering" to those who "may need" accident and illness prevention services. Insurers are uniquely positioned to identify, through survey and other tools provided for in subsection (a), where accident and illness services should be offered. The statute does not shift the burden entirely to the employer to request the service as AAI suggests. Identifying need is part of the insurer's obligation under paragraph (a). This same analysis and reasoning applies to the AAI's suggestions for changes to subsections 129.102(3)(D); 129.102(3)(F) and 129.102(3)(H).

Again, the AAI proposal to change the statutory language to reporting on requests (section 129.106) is in direct conflict with Section 1001(e) of Act 44 which requires insurers to "...submit to the Department detailed information on the type of accident-prevention services offered or provided to the insurer's policy holders..."

In sum, the AAI proposals attempt to shift the obligation to employers to request accident and prevention services rather than providing an affirmative duty of insurers to offer or provide these services to employers. Under the statute, the employer has the final say on whether or not the accident and illness-prevention services are accepted. There is no penalty for refusing an offer.

Acceptance of the AAI proposals would be contrary to the language and purpose of the statute. The health and safety provisions are designed to bring expertise in accident and illness services to employers from those with expertise as part of the insurance policy the employer purchases. Although providing these services initially may cost money, the immediate and long-term savings for employers and potentially-injured workers far outweigh the expenditures.

Moreover, lack of knowledge as to the basis upon which policies are written may lead to reluctance by employers to request services out of fear that the insurer will raise their premiums.

As noted by various workers' compensation experts, health and safety in the workplace varies more within industrial classifications than between them. In other words, workplace safety and health can be substantially improved by focusing on specific work sites. The statute provides employers, particularly small employers, the opportunity to get expert advice on improving the accident and injury rates, thereby lowering costs and saving human lives.

I strongly recommend that the IRRC approve the regulations as submitted.

Sincerely,

Robert E. Belfanti, Jr.
Democratic Chairman
House Labor Relations Committee

REB/snf

Cc: Committee Members (D)
Honorable Joseph M. Gladeck, Jr.
Mr. Len Negley, Bureau of Workers' Compensation