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## SPECIAL DELAWARE WORKERS' COMPENSATION ALERT

### CHANGES TO THE DELAWARE WORKERS' COMPENSATION STATUTE EMPLOYER FORMS AND OUT-OF-STATE PROVIDERS

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On August 17, 2011, Governor Jack Markell signed Senate Bill 108 into law. This Bill has two significant changes to the Delaware Workers' Compensation Act.

Employers had an obligation to complete the Employer's Form identifying any modified duty work available within 14 days from the date notice of the injury was received and send it to the injured worker's treating physician. Employers generally were not aware of the restrictions placed on the injured worker at this time. The statutory amendment changes this requirement. The change allows receipt of the physician's report to serve as the triggering event for the completion of the Employer's Report of modified-duty availability. Employers are now responsible for completing the "Employer Form" within 14 days of receipt of the physician's report, which provides the specific restrictions placed on the injured worker. Employers will now know what restrictions an injured worker may have before they need to identify modified work available. The completion of the employer's form after receipt of the medical provider's

restrictions provides the employer with the opportunity to know what modified duty they can offer based on the specific restrictions imposed. Employers may find a copy of this form on the Department of Labor website at <http://dowc.ingenix.com/info.asp?page=forms>

The second change to the statute addresses treatment rendered to an injured worker by an out-of-state provider who is licensed to practice medicine in the state of Delaware. Prior to the change in the statute, medical providers who rendered treatment outside of the state of Delaware were paid at a higher rate than the Delaware Fee Schedule. The purpose of this change is to ensure that Delaware medical providers do not take advantage of the statute by opening a facility across state lines to perform procedures on patients that could be performed in state in order to collect higher fees. The section continues to allow injured workers to obtain treatment outside of the state, however, the medical provider is bound by the Delaware Fee Schedule.

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