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*Pennsylvania
Workers'
Compensation Bulletin*

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House Bill 1840

Passes Through the State Senate

House Bill 1840 is that Bill introduced by State Representative Robert Kauffman (and others) to deal with the effect of the Decision of the Pa. Supreme Court in *Protz v. W.C.A.B. (Derry Area School District)*, 161 A. 3d 827 (Pa 2017). Recall that, in *Protz*, the Supreme Court struck down the IRE system (put into place by the legislature under the 1996 amendments to the Workers' Compensation Act) based upon the Court's ruling that using "the most recent edition" of the AMA Guides to the Evaluation of Permanent Impairment amounted to an unconstitutional delegation of legislative authority.

House Bill 1840 remedies that delegation problem by changing the use of the AMA Guides from "the most recent edition" to the Sixth Edition. Going forward, the Sixth Edition will be used for all permanent partial disability evaluations, unless and until the Legislature acts to amend the use to any new edition released by the AMA. It is important to note that the Bill does reduce the threshold for total disability from 50% to 35% so it should be easier for claimant's to get past that threshold.

As originally introduced in the House, 1840 also gave credit to employers/insurers for any partial disability paid prior to the effective date of this new provision. However, that section of the Bill has been removed in the version passed by the Senate. Therefore, the Bill does not preserve any weeks of partial disability paid pursuant to an IRE performed under the prior provisions of the Act. However, the reader should note that the Commonwealth Court recently held in *Whitfield v. WCAB (Tenet Health System Hahnemann, LLC)*, 608 C.D. 2017 and the unreported opinions in *Moore v. WCAB (Sunoco, Inc.)*, 715 C.D. 2017 and *Pavlack v. WCAB (UPMC Southside)*, 702 C.D.2017, that a reinstatement of benefits under a *Protz* petition is only effective as of the date the claimant files her petition. The claimants in both unreported cases have filed Petitions for Allowance of Appeal. The Supreme Court has not yet agreed to hear appeals of the unreported companion cases (*Whitfield* was not appealed) so we must wait for a Decision from the Supreme Court on this issue. However, at least for now, if the employer/insurer obtains a new IRE under this section (which places the claimant back on the 500 week clock), the employer will be able to reduce the 500 weeks due to account for the weeks previously burned under a prior IRE. Therefore, employers/insurers should make certain that any *Protz* reinstatement granted is only granted as of the date the petition is filed by the claimant.

The Bill is now being sent to Governor Wolf for signature. Hopefully he will not exercise his veto power.

