7. EXPENSES INCLUDED IN LOSSES

a. Medical or Legal Expenses Incurred for the Benefit of the Claimant

Medical or legal court expenses incurred for the benefit of the claimant, or that the carrier is required to produce for the benefit of the claimant, must be reported as either an indemnity or medical loss depending upon the nature of the expense.

b. Employers' Liability Loss Adjustment Expense (LAE)

Employers' liability losses must include allocated loss adjustment expenses, as defined in Item 13 of this Part. The entire amount of losses and allocated loss adjustment expenses for an employers' liability claim **must be reported as incurred indemnity losses** on the unit statistical report. If a deductible program applies, both losses and loss adjustment expense must be reported on a **gross** basis.

c. Impartial Examinations Ordered by the New York State Workers' Compensation Board

Expenses for impartial examinations ordered by the New York State Workers' Compensation Board are to be reported as incurred losses.

d. Awards

When an award to a claimant includes the cost of witness fees, attorney fees and other court costs or expert medical witness fees, the amount so awarded must be considered as part of the cost of benefits and must be included with the incurred indemnity amount reported. With respect to claims brought by persons against whom an employee has brought a third-party common-law action, such costs must be reported as an incurred indemnity loss whether or not a recovery is made against the third-party by the employee.

e. Penalties for Delays In Making Compensation Payments

If the carrier is liable for penalties for reasons beyond its control that accrue as benefits to the injured worker or his or her dependents, the penalties must be reported as indemnity losses; e.g., interest on awards or for penalties imposed upon the employer for improper controversion of awards. If the carrier is liable for penalties for any reason within the carrier's control, the penalties must be considered as unallocated loss adjustment expense and not reported as loss.

f. Physical Rehabilitation Expenses

Physical rehabilitation costs incurred due to the purchase of physical rehabilitation services from outside vendors must be reported as part of incurred medical loss. For the purposes of this Rule, physical rehabilitation concerns all medical activities performed, and/or services rendered, in the treatment of an industrial injury or disease to achieve maximum recovery, relief and/or cure. The following physical rehabilitation activities by medically trained persons, including registered nurses, performed by outside vendors must be reported as incurred medical losses:

i. Various necessary evaluations and therapies including physical, occupational, speech and hearing.

ii. Coordination of services such as necessary medical equipment or special nursing care in a facility or the home.

iii. Necessary consultation(s) with physician(s).

iv. Monitoring the treatment and progress of a claimant's medical condition.

v. Coordination of family, agency, and community services to provide optimal recovery.

In addition, expenses associated with the above activities performed by carrier personnel (other than claims supervisors' or claims adjusters' efforts to return an injured worker to gainful employment) must also be reported as part of medical losses if the carrier personnel are medically trained as one of the following:

i. Physicians

ii. Licensed registered nurses

iii. Licensed speech therapists

iv. Registered physical therapists

v. Dentists and dental technicians

vi. Occupational therapists

vii. Chiropractors

viii. Podiatrists

ix. Licensed physician assistants

x. Licensed cardio-pulmonary technicians