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Filing of the Workers' Compensation Rating and Inspection Bureau For a General Revision of Workers' Compensation Rates Docket No. R2021-02

Decision and Order

I. Introduction and Procedural History

On December 20, 2021, the Workers' Compensation Rating and Inspection Bureau of Massachusetts ("WCRIBMA"), on behalf of its members, submitted a filing for a worker's compensation general rate revision to be effective July 1, 2022 ("the WCRIBMA Filing" or "Filing"). The WCRIBMA Filing sought a 2.7 percent statewide average increase. The Commissioner of Insurance ("Commissioner") designated Jean F. Farrington, Esq. and Matthew A. Taylor, Esq. as presiding officers on this matter. A hearing notice, issued on January 12, 2022, scheduled a public comment hearing for February 4, 2022. On January 21, 2022, the Attorney General ("AG") filed a notice of intent to appear and participate. On January 26, 2022, an order issued scheduling a prehearing conference for February 4, following the public comment hearing.

Representatives of the parties to this proceeding, WCRIBMA, the AG, and the State Rating Bureau in the Division of Insurance ("SRB") (collectively the "Parties") spoke at the public comment hearing. A representative of the Massachusetts NAHRO Self-Insurance Group also made a presentation. At the following scheduling conference, the Parties requested that scheduling testimony be delayed until they had an opportunity to discuss a possible stipulation. Accordingly, status conferences took place on February

25, 2022, and March 3, 2022, at which the Parties reported steady progress towards a stipulation. On March 17, 2022, the Parties submitted a Stipulation and, at the Parties' request, scheduling of advisory filings and cross-examination was suspended indefinitely. The Stipulation, in brief, agreed to an overall average decrease in the existing workers' compensation average rates of -3.46 percent, to be applied in accordance with other provisions of the Stipulation, and to be effective for policies written or renewed on or after July 1, 2022, through June 30, 2023.

Because it appeared that data and information that was not included in the Filing was available to the Parties and relied on to support the stipulation, on March 28, 2022, we issued an order pursuant to M.G.L. c. 152 § 53A (3) to submit additional information to the record and to clarify other sections of the Filing. The WCRIBMA timely complied with that order. On March 30, 2022, the WCRIBMA submitted an amended stipulation extending a condition in the stipulation requiring the Commissioner's approval by a date certain.

II. Statutory Framework

Massachusetts General Laws, Chapter 152, §53A ("§53A") sets out the statutory requirements for obtaining approval of rates for Massachusetts workers' compensation insurance. Subsection (1) requires any insurance company writing workers' compensation insurance in the Commonwealth to file its risk classifications and premiums with the Commissioner, either directly or through a rating organization authorized to act on its behalf. The Commissioner thereafter conducts a hearing to determine whether the classifications and rates are not excessive, inadequate or unfairly discriminatory for the risks to which they effectively apply and fall within a range of reasonableness.

In addition to these general requirements, §53A (12) specifically states that the Commissioner shall not approve classifications or rates that provide for any of the following: 1) dividends, unabsorbed premium deposits, savings or other payments allowed or returned by the insurer to policyholders, members, subscribers or stockholders; 2) expenses that exceed the filing insurer's expense needs; and 3) commission allowances that are not demonstrated to be reasonable and to reflect the actual cost to the agent or broker of services they provide.

The Commissioner, pursuant to §53A (13), also must make a finding, on the basis of information in the rate filing, that insurers employ acceptable cost control programs and techniques.

III. The Stipulation

In summary, the Stipulation states that no party will object to or appeal from an approval by the Commissioner of the WCRIBMA Filing on the condition that the overall average change in the current workers' compensation average rates shall be -3.46% and complies with other conditions set out in the Stipulation. The revised rates, classifications, rating programs, rating plans, rating factors and rating values shall apply to new and renewal policies effective on and after July 1, 2022.

To implement the stipulated -3.46% overall average rate change, the rating values in the WCRIBMA Filing shall be computed in a manner consistent with the WCRIBMA Filing in accordance with the following provisions in the Stipulation:

1) the rating values in Sections IX, X, XI, and XII of the WCRIBMA Filing shall be computed in a manner consistent with the WCRIBMA Filing but, to achieve the stipulated -3.46% overall average rate change, substitute an underwriting profit of -0.495% for the underwriting profit provision shown in Section VII-A, Exhibit 1 of the WCRIBMA Filing;

2) the rating values for F-Classes in Sections VIII of the WCRIBMA Filing shall be computed in a manner consistent with the WCRIBMA Filing but shall reflect a -9.1% overall average rate change for those classes as a result of substituting an underwriting profit of -0.495% for the underwriting profit provision shown in Section VII-A, Exhibit 1 of the WCRIBMA Filing; and

3) To set the rates to be effective on and after July 1, 2022, the classification pricing methodology proposed in Section IX of the WCRIBMA Filing shall be used, provided that the target industry group rate changes and maximum and minimum change in average rates for individual rating classifications shall be those displayed in Exhibit 1 attached to the Stipulation.

The revised rates, classifications, rating programs, rating plans, rating factors and rating values agreed to in the Stipulation shall apply to both new and renewal policies

effective on and after July 1, 2022, including all such policies in the Massachusetts Workers' Compensation Assigned Risk Pool.

Revised manual pages reflecting the Stipulation that will be applicable to new and renewal policies with effective dates on and after July 1, 2022, are attached as Exhibit II to the Stipulation.

On or before December 23, 2022, the WCRIBMA will submit a general revision of workers' compensation insurance rates and rating values pursuant to 211 CMR 110.04 and M.G.L. c. 152, §§ 52 and 53A, for rates to apply to new and renewal workers' compensation insurance policies with effective dates on and after July 1, 2023.

The WCRIBMA will provide the SRB with the information it is required by 211 CMR 110.04 to provide to it sixty days in advance of submitting a workers compensation insurance rate filing, and concurrently provide it to the AG in the same form.

The Parties agree that the Stipulation has no precedential value and will not be relevant in future hearings on any line of insurance, and that they will not attempt to introduce it (or the decision adopting this Stipulation) as evidence or to rely on either document for any purpose in future hearings, provided that the Stipulation may be considered in any future hearing with respect only to the implementation of this Stipulation.

Each party further acknowledges that the Stipulation does not imply approval or disapproval by any party of any particular ratemaking methodology or projection and that each otherwise reserves the right to contest in future hearings all aspects of rate-setting including those addressed in the Stipulation.

IV. Cost Containment

The WCRIBMA's Cost Containment Filing assembles a series of insurer reports that, it contends, support its position that its member companies, as required by M.G.L. c. 152, §53A (13), "employ cost control programs and techniques acceptable to the commissioner which have had or are expected to have a substantial impact on fraudulent claim costs, unnecessary health care costs, and any other unreasonable costs and expenses, as well as on the collection of the appropriate premium charges owed to the insurers." Since 1993, the cost containment section of the filing has principally consisted of a survey sent by the WCRIBMA to a representative group of its members; in 2021 the

survey was sent to the ten largest National Association of Insurance Commissioners (“NAIC”) insurer groups writing workers’ compensation insurance in Massachusetts.¹ A copy of each company’s survey response is submitted as part of the Filing.

The Filing also includes pages from the FY2020 Annual Report of the Massachusetts Department of Industrial Accidents that provide information on grants awarded by its Office of Safety and its report on 2019 workplace fatalities, reports from its Office of Investigations on stop work orders and compliance investigations, and 2020 statistics on the caseload of its Reviewing Board. The WCRIBMA also submitted documents reporting historical data on the Insurance Fraud Bureau’s (“IFB”) case load for various time periods and copies of the IFB’s 2020 Annual Report and its newsletter, “e-focusFraud”, for May 2021. The WCRIBMA asserts that, as in past years, the materials it has submitted satisfy its obligation to show that its members are using adequate cost control programs and techniques.

The cost containment survey requests information on three general areas: Claims, Premiums, and Expenses. Briefly summarized, the Claims section addresses prevention, in the form of loss prevention and engineering programs, information on the company’s claims operations, including measures to control hospital and medical bills and to manage rehabilitation and return-to work programs, and asks specifically about programs and techniques to control fraud relating to claim costs and expenses. The Premiums section focuses on the company’s programs and techniques to collect premium due, identify premium fraud, and audit policies to ensure that they receive correct premium for the policy term. The Expense section requests information about programs the company employs to control costs associated with a wide range of its business expenses, utilizing as a model for allocating those expenses Part 1 of the Insurance Expense Exhibit that supplements the annual statements that insurers file on forms prescribed by the NAIC.

The selected companies were asked to return their completed surveys to the WCRIBMA by July 15, 2021, for a filing to be submitted in December 2021. The instructions do not specify the time frame that the company should use as the basis for

¹ The ten companies are: American International Group (AIG), A.I.M. Mutual Insurance Company, Atlantic Charter Insurance Company, Chubb Insurance Company, Guard Insurance Group, Hartford Insurance Group, Liberty Mutual Insurance Company, PMA Pooled Companies, Travelers Insurance Company, and Zurich Insurance Company.

preparing its responses, ask that it identify clearly any recent changes in its cost containment practices, or address any particular topics. The survey responses submitted in the filing range in length from 8 to 82 pages; the amount of detail the companies provide varies greatly.

The statute requires the Commissioner to make findings that insurers employ cost control programs that are “acceptable” and that have or are expected to have a substantial effect on their costs, expenses and premium collections. Cost containment filings that do not provide information on the impact of insurers’ programs are insufficient to support such a finding.² Evaluating the effectiveness of a company’s loss prevention programs, for example, relies on additional information about the company’s policies and practices for implementing those programs with its book of business. Pro forma responses to the survey questions indicate that workers’ compensation insurers in general share common goals for cost containment and employ similar practices to achieve them. Responses that omit detail on the company’s implementation of programs to achieve those goals and provide no assessment of their effectiveness as cost control factors are insufficient to demonstrate a substantial effect on cost containment.

Over time, matters common to the industry will change, requiring adjustments to the survey to ensure that it addresses the effect of those changes on factors that are relevant to cost containment. Two years ago, the global pandemic generated immediate and wide ranging changes in the way work is conducted and businesses operate, including the delivery of medical services. The long term effects of the pandemic are unpredictable and challenge efforts to develop prospective rates. What is apparent from the responses to the cost containment surveys is that some companies have identified issues that are relevant to what appear to be universal concerns in the area of cost containment. To improve the survey’s value, the WCRIBMA should carefully review its format to ensure that companies: 1) document procedures relating to their cost containment efforts that have been adjusted or changed since March 2020, describes the effectiveness of those new procedures, and states whether it considers them temporary or

² In the *Decision on 2003 Workers’ Compensation Rates* we faulted the cost containment filing for failure to document changes in company practices over time and to analyze issues such as the use of managed care organizations and improvements in the implementation of certain loss control techniques.

long term and 2) respond to matters that are appropriate to address as matters of public policy.

The survey responses identify several issues that have been the subject of significant changes at particular companies. Several reported changing their audit procedures to reduce the number of in person onsite visits to policyholders or to otherwise adjust audit reporting. Others indicated that they were evaluating their space needs in a changing work environment; one indicated a significant reduction in travel expenses generated by a revision to company policy. The second group addresses such matters as targeted as company management of opioid prescriptions, an issue of public concern at many levels, and revisions to the standard procedures for accessing medical care. Opioid use, as an aspect of medical claims may have, in addition to financial effects, social consequences for company rehabilitation and return to work programs. Institutional shifts in the way medical services are provided that differ from established practices may have significant effects on medical claim costs and are a reasonable basis for inquiry on the cost containment survey.

While we do not disapprove the Filing on the basis of the Cost Containment Filing, we advise the WCRIBMA, in future filings, to revise the scope of the survey to ensure that it provides documentation sufficient to support findings that cost control programs are acceptable, respond to changes in circumstances that affect the industry as a whole, and are implemented so as to demonstrate a substantial effect on insurer costs.

V. CONCLUSION

We find that the Stipulation submitted by the Parties will provide for classifications or premiums that are “not excessive, inadequate, or unfairly discriminatory for the risks to which they respectively apply, and fall within a range of reasonableness.” We therefore approve the Stipulation and hereby Order that the classifications and rates set out in the filing as revised according to the terms of the Stipulation shall apply to new and renewal policies issued on and after July 1, 2022, through June 30, 2023.

SO ORDERED this 22nd day of April 2022.

Matthew Taylor

Matthew A. Taylor
Presiding Officer

Jean Farrington

Jean F. Farrington
Presiding Officer

Workers' Compensation Rating and Inspection Bureau of Massachusetts 2021 Filing for a
General Rate Revision, Docket No. R2021-02 Decision and Order

Affirmed this 22nd Day of April 2022

A handwritten signature in black ink, appearing to read "Gary Anderson", written over a horizontal line.

Gary D. Anderson
Commissioner of Insurance