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Filing of the Workers' Compensation Rating and Inspection Bureau
For a General Revision of Workers' Compensation Rates
Docket No. R2022-02

Decision and Order

I. Introduction and Procedural History

On December 23, 2022, the Workers' Compensation Rating and Inspection Bureau of Massachusetts ("WCRIBMA"), on behalf of its members, submitted a filing for a workers' compensation general rate revision to be effective July 1, 2023 ("the WCRIBMA Filing" or "Filing"). The Filing sought a 4.00% statewide average decrease. The Commissioner of Insurance ("Commissioner") designated Jean F. Farrington, Esq. and Matthew A. Taylor, Esq. as presiding officers for this matter. A hearing notice, issued on January 11, 2023, scheduled a public comment hearing for February 3, 2023. On January 17, 2023, the Attorney General ("AG") filed a notice of intent to appear and participate. On January 26, 2023, an order issued scheduling a prehearing conference for February 3, to follow the public comment hearing.

Representatives of the WCRIBMA and the State Rating Bureau in the Division of Insurance spoke at the public comment hearing. Jeffrey Kadison, an actuary, made a presentation on behalf of the Massachusetts NAHRO Self-Insurance Group.[1] At the following conference, the Parties requested that scheduling witnesses be delayed until they had an opportunity to discuss a possible stipulation. Accordingly, status conferences were held on

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[1] A representative of Massachusetts NAHRO Self-Insurance Group also submitted written commentary.

February 17 and March 3, 2023. The Parties reported steady progress towards a stipulation and that no evidentiary hearing would be required. On March 17, 2023, the Parties submitted a Stipulation that, in brief, agreed to an overall average decrease in the existing workers' compensation average rates of 10.2%, 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, 2023.

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 -10.2% 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, 2023.

To implement the stipulated -10.2% 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 -10.2% overall average rate change, substitute an underwriting profit of -5.13% for the underwriting profit provision shown in Section VII-A, Exhibit 1 of the WCRIBMA Filing, and 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 -15.6% overall average rate change for those classes as a result of substituting an underwriting profit of -5.13% as shown above.

2) The classification pricing methodology that the WCRIBMA proposes to use in Section IX of the Filing shall be approved for use in setting the rates to be effective on and after July 1, 2023, 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 new and renewal policies effective on and after July 1, 2023, 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 polices with effective dates on and after July 1, 2023, are attached as Exhibit II to the Stipulation.

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 §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 2022 the survey was sent to the ten largest National Association of Insurance Commissioners ("NAIC") insurer groups writing workers' compensation insurance in Massachusetts.[2] A copy of each company's survey response is submitted as part of the Filing.

The Filing also includes the FY2021 Annual Report of the Massachusetts Department of Industrial Accidents, the Insurance Fraud Bureau's 2021 Annual Report and two issues of its newsletter, "e-focusFraud."

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

[2] 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.

prescribed by the NAIC.

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. In light of the Stipulation, we do not reach that issue in this decision.

Three 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. Although the principles underlying cost containment are consistent, it is reasonable to expect insurers to adjust their practices as necessary to address technological or other changes that may produce more accurate results. As the post-pandemic environment continues to evolve, it is important to review the content of the cost containment portion of the filing to ensure that it is responsive to changed circumstances that affect the industry's operations and may substantially affect insurer costs.

V. Future Filing Date

The Stipulation does not propose a filing date for the next general rate revision of workers' compensation rates. Pursuant to M.G.L. c. 152, §53A, such rates must be filed at least every two years and on any additional date that the Commissioner may designate. In the current Filing, as in its 2021 filing, the WCRIBMA developed its projected rates from policy year 2018 and 2019 data, this year weighting that data to give primary weight to PY 2018. It rejected the historical approach, that would have used PY 2020 data, on the ground that data for that year does not represent the economic and workers' compensation environment that will be in place in July 2023 and thereafter. The Covid-19 pandemic unquestionably had immediate and significant effects on virtually all sectors of the economy and on the structure and operations of the labor force. The responses to it included developing work-from-home policies for many employees and creating new ways to ensure that medical care for some injuries could be treated in alternative settings such as telemedicine. Wide-ranging disruptions to longstanding operations could affect data reporting.

As noted by the WCRIBMA, over the course of the three years since the start of the pandemic, economic conditions information relevant to developing workers' compensation rates, such as the unemployment rate, has continuously improved. The Filing does not, however, address the extent to or the direction in which business operations have changed and evolved over those three years and the effects those changes might have on prospective workers' compensation rates. The WCRIBMA characterizes PY 2020 data, compared to PY 2018 data, as anomalous. We are persuaded that it is unreasonable to base rates to be in effect for more than one year on the premise that data that is now characterized as anomalous will always be so. Data from PY 2019 and thereafter reflect significant changes in the workplace and the economic environment and require reassessment of what have become standard practices in business operations and an analysis of their role in projecting future workers' compensation rates. We therefore direct the WCRIB to submit a filing in December 2023 for rates to take effect on July 1, 2024.

VI. Classification Pricing

In Section IX of the Filing, the WCRIBMA calculates a separate basic rate for each classification code. In the course of that calculation, it analyzes the credibility of policy year data on payroll, policy premium and losses reported to it for each classification through the Unit Statistical Data Plan. If the Massachusetts reported data is not sufficient to demonstrate credibility, the actuaries rely on countrywide data for that classification. Workers' compensation self-insurance groups ("SIGs"), formed in Massachusetts under M.G.L. c. 152, §§25E through 25W, by agreement report payroll, premium and loss data to the WCRIBMA, but the WCRIBMA does not incorporate those values into the data used to demonstrate the credibility of Massachusetts experience. Massachusetts NAHRO Self-Insurance Group, a Massachusetts SIG pursuant to M.G.L. c. 152, §25G, that claims to write most of the business in classification code 9033, submitted statements and exhibits demonstrating that this approach, assessing credibility only on the basis of reports from employers who receive insurance through the WCRIBMA as augmented by countrywide data to determine credibility, has produced an inadequate manual rate that is far lower than it would be if credibility were based on all Massachusetts data for that code.

Upon review of the issue, the Commissioner has no objection to the use of SIG data on payroll, premium and loss data, together with that of employers who obtain insurance from a WCRIBMA member, for the purpose of developing a base rate for a particular classification code, especially where a significant portion of the business in a particular classification code is written by one or more SIGs. The Parties are ordered to address this issue as part of the next filing for a general rate revision.

VII. 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, 2023, through June 30, 2024.

SO ORDERED this 4th day of April 2023.

Jean F. Farrington

Matthew Taylor

Matthew A. Taylor	Jean F. Farrington
Presiding Officer	Presiding Officer

Affirmed this 4th day of April 2023.

Gary D. Anderson
Commissioner of Insurance