COMMENTS OF THE:

MASSACHUSETTS INSURANCE FEDERATION

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

AMERICAN INSURANCE ASSOCIATION

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

TO THE DIVISION OF INSURANCE REGARDING THE REVIEW OF REGULATION 211 CMR 110.00

August 17, 2015

The Massachusetts Insurance Federation, Property Casualty Insurers Association of America, American Insurance Association, and National Association of Mutual Insurance Companies are property/casualty insurance trade associations whose insurance company members collectively write nearly 100% of the workers compensation insurance written in the Commonwealth. On behalf of our member companies, we urge the Division of Insurance to use this regulatory review process to take a step back from how workers compensation rate regulation has been done for decades and look at how it could be updated, modernized and improved in ways that are consistent with the rating law.

Streamlining the Rate Review Process

Without a doubt the 1991 workers compensation reforms that Massachusetts adopted have been a ringing success in stabilizing the market. Rates have decreased 65% since implementing the 1991 reform act, due in large part to the strong medical fee schedule, utilization review procedures, pay without prejudice and other benefit and system changes that were put in place by that law.

The approach to regulating the workers comp rates has also evolved over the past 26 years. What was once a somewhat straight forward process between the industry, represented by the Workers Compensation Rating Inspection Bureau of Massachusetts ("WCRIBMA"), and the regulator, represented by the State Rating Bureau ("SRB"), and driven by actuarial data, has devolved into a time consuming, expensive, adversarial process that is dominated by discovery requests that have tripled in the past decade.

The statutory standard of reasonableness has been replaced by the standard of "exactness". When comparing the rate review process with that of other Administrative Pricing states, Massachusetts stands out for its cost, length and formality. The Massachusetts statute[1] requires a "hearing within 60 days of the industry's filing of the classification of risks and premium to determine whether the classifications and rates are not excessive, inadequate or

[1] Ch. 152; 53A(2)

unfairly discriminatory for the risks to which they respectively apply and that they fall within a range of reasonableness." It is the Division's regulation, 211 CMR 110.00, that provides the formality and turns what could be a straight forward administrative hearing into an adjudicatory process with discovery, cross examination under oath, and legal briefing requirements shifting the focus from actuarial reasonableness to legal exactness – none of which is required by Chapter 152, Section 53A. Over the past 26 years, the structure and tenor of the workers' compensation rate hearing has morphed from one where the Commissioner disapproves if he finds that the rates are excessive, inadequate or unfairly discriminatory to one where government, in the parties of the SRB and the Attorney General ("AG"), "fix and establish" the overall rate to be charged as they did in the personal automobile rate cases.

Profit is the most contested portion of the Massachusetts rate hearing but is not a main driver of rate need (indemnity and medical benefits comprise the lion share of the rate need). Even in this historically low interest rate environment, the litigated profit provision is not positive. All the other administrative pricing states have some standard profit provision that is fixed in the rate calculation and not re-litigated in every rate filing.

Administrative Pricing State	**Profit Load**
Arizona	2.5%
Florida	2.5%
Idaho	4.5%
Iowa	2.5%
New Jersey	2.5%
Wisconsin	2.5%

Recommendation for Rate Filing Process

We encourage the Division to take this opportunity to adjust the workers compensation rate hearing from an adjudicatory process to an administrative one. This would allow for the rate review process to be led by the SRB's actuary rather than attorneys or non-actuarial personnel, as is currently the case. Resetting the hearing to one focused on the statutory standard would return some balance and reasonableness to the rate review process. Further, it is time to adopt a more uniform approach to profit as is found in all other administrative pricing states, such as a standard profit provision of 2.5%. It seems rather incredulous that in this environment of record low interest and reinvestment rates, workers compensation insurers continue to be denied any positive profit provision in Massachusetts alone. Adopting a standard profit provision would have the added benefit of reducing the amount of time, energy, discovery requests and money that is spent on this part of the rate case.

If the Division maintains an adjudicatory process, we would suggest three fundamental changes:

1. All parties must file complete filings or alternative filings; no partial filings should be allowed
2. All parties must be subject to the ex-parte communication prohibition currently only imposed on the WCRIBMA
3. Only testimony or evidence submitted under oath shall be given any probative value by the presiding hearing officer. Opening or closing statements are neither tested nor cross-examined and should not be given any weight by the hearing officer in the final decision.

Residual Market

The size of the Massachusetts residual market, whether measured by policy count, the amount of premium or the percentage of total market, ranks number one in the country.

2014 Policy Count		**2014 Premium Ranking**		**2014 % of Premiums Written**	
State	**Count**	**State**	**Premium**	**State**	**Percent**
Massachusetts	50,483	Massachusetts	$218 M	Massachusetts	19.4%
Illinois	30,789	Illinois	$120 M	Alaska	15.8%
Georgia	18,223	Virginia	$ 62 M	Vermont	11.0%
Virginia	15,128	Georgia	$ 60 M	New Hampshire	10.9%
Connecticut	13,345	Connecticut	$ 55M	Arkansas	10.4%
South Carolina	11,085	Arizona	$ 52 M	Kansas	10.4%

The size of the pool is creating a dangerous leverage point in the Massachusetts' workers compensation market, and steps need to be taken to reduce its growth. All Administrative Pricing states, except Wisconsin and Massachusetts, have a surcharge or rate differential for risks in the residual market which provides some incentive for them to shop for voluntary coverage. As can be seen from the following chart, Massachusetts alone, among administrative pricing states has a double digit size residual market.

Administrative Pricing State	**Surcharge or Rate Differential**	**Residual Market Size in 2012**
Arizona	35% residual market rate differential generating estimated revenue of 1.5% additional revenue (no offset)	4.3%
Florida	Surcharges 5%, 20%, 65% plus $475. Also ARAP applies to Tier 3 which is also assessable	1.7%
Idaho	60% residual market rate differential generating estimated revenue of 0.4% additional revenue (no offset)	0.7%
Iowa	30% residual market rate differential generating estimated revenue of 1.5% additional revenue (no	5.0%

	offset)	
Massachusetts	0	15%
New Jersey	All risks above minimum premium that acquire coverage through the residual market are subject to the Plan Premium Adjustment Program (PPAP). There is currently a minimum 17% PPAP surcharge; however certain rated risks may qualify for a surcharge up to 35%. The additional premium is included in standard premium in our aggregate financial data calls and is used in estimating rate levels.	6%
Wisconsin	0	4.5%

The Massachusetts statute does not contain any prohibition on a rate differential for residual market risks. We believe that applying a surcharge or rate differential, would provide some incentive for risks to shop for voluntary coverage as well as making sure the residual market does not become an underwriting burden on the voluntary market or a disincentive for carriers to continue to participate in the Massachusetts workers compensation market.

The rating differential could take many different forms, from a straight surcharge, a surcharge on risks over a certain premium or an increase in the ARAP (All Risk Adjustment Premium) surcharge with no corresponding premium offset for pool risks.

Additionally, in order to move risks out into the voluntary market, there should be a mandatory reapplication of the risk every three years and a tightening of the two-company declination requirement to be two companies actively writing rather than merely licensed to write workers compensation.

Conclusion

There is much about the Massachusetts workers' compensation market that is working well, but the size of the residual market is a cautionary indication that there are aspects of the market that need to be improved. Massachusetts is an administrative pricing state for workers compensation rating, and in looking at the other six administrative pricing states, there are procedures and methodologies that if adopted here, would better streamline the rate review process without harming employers. Massachusetts has a competitive market, with schedule rating credits and deviations being offered in certain cases. However, unlike other administrative pricing states[2], Massachusetts deviations and schedule rating credits are only downward. What this means is that the rate review process sets the overall maximum rate and only downward movement is allowed. Consequently the drive for rate exactness and fear of

[2] AZ, FL, IA, ID and NJ allow for upward and downward movement from the overall rate with either deviations, schedule credits and debits a combination of both.

allowing for any rate increase over the past two and a half decades[3] has served only to squeeze out a more liberal use of deviations and increase the overall size of the residual market.

A realignment of the rate review process with the materiality of the rate drivers, and some form of surcharge or rate differential for residual market risks are some minor tweaks that will improve the overall workers compensation market. However, the most important change is one of tone and structure – moving to an administrative hearing would allow the actuarial personnel at the SRB and the WCRIBMA to play a more significant role and largely realign the balance of materiality and scrutiny, ensuring rate reasonableness and improving the overall market for employers.

We thank you for the opportunity to comment on 211 CMR 110.00 and welcome the opportunity to discuss any recommendations in greater detail with the Division of Insurance.

John P. Murphy
Executive Director
Massachusetts Insurance Federation

Francis. C. O'Brien
Vice President
Property Casualty Insurers Association of America

Alison Cooper
Vice President
American Insurance Association

Joe Thesing
Vice President
National Association of Mutual Insurance Companies

[3] There have been only 2 rate increases since 1991 reform act; a 6.2% in Jan. 1993 and a 1% in July 2001.