

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE**

**In the Matter of:** Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to pure premium rates for workers' compensation insurance, California Workers' Compensation Uniform Statistical Reporting Plan—1995, Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995. These regulations will be effective on **January 1, 2010, unless a different effective date is noted or specified.**

**FILE NUMBER REG-2009-00022**

**DECISION AND ORDER**

Four months have passed since I issued my previous Decision on July 8, 2009 rejecting the Workers' Compensation Insurance Rating Bureau's (WCIRB) request for a record-level increase in the Worker's Compensation Claims Cost Benchmark on behalf of its insurance company members. In that Decision, I informed both the WCIRB and California's workers' compensation insurers that I would not include avoidable costs in approving increases to this Benchmark. The WCIRB filed a request on August 18<sup>th</sup> for another near record increase based upon similar and only briefly updated information and without addressing my previous concerns. Again, for the reasons set forth below, I am rejecting the WCIRB's request for an increase in the Benchmark.

**1. The WCIRB Benchmark Filing Fails to Address Avoidable Costs**

I am disappointed that the WCIRB's current rate filing fails to provide any analysis of the information generated at the Department's investigatory hearing on June 8<sup>th</sup>. One reason for conducting and incorporating that investigatory hearing in the WCIRB's prior rate increase request was to gain more information on the medical cost drivers in the workers' compensation system and determine possible ways to address them. The WCIRB has failed to review or even mention the 27 recommendations to address the medical cost drivers developed in that hearing, and that is a major deficiency in its current request.

The WCIRB is requesting a rate increase for costs incurred by its insurance company members. The filing fails to adequately discuss or address to what extent those costs are avoidable or how that can be determined. The Department's actuaries have recommended that research be conducted on the impacts of our 27 recommendations and the current effectiveness of the 2003-2004 workers' compensation reform cost controls used by insurers and self-insured employers. Without this information, my concerns have not been addressed and the WCIRB's request for a rate increase is still not adequately supported.

California is currently experiencing 12.2% unemployment, the worst since the Great Depression. The actual unemployment rate is likely higher since many workers have given up looking for work and many more are under-employed, working in part-time work to make ends meet for their families. These economic conditions require me to be focused upon making sure that California's workers' compensation insurers are doing everything to make insurance premiums as affordable as possible, since any avoidable costs will lead to greater premiums for employers and lessen the chance to grow their businesses and hire more workers. When I see evidence that cost controls from the 2003-2004 reforms have not been fully implemented, inefficiency, and less focus on cost-effective medical treatment, I have no choice but to stand up for policyholders and their employees in holding insurers accountable.

## **2. The WCIRB's Permanent Disability Analysis**

I am in agreement with my staff's assessment of the WCIRB's inadequate submission on permanent disability cost increases resulting from the WCAB decisions in Ogilvie and Almaraz/Guzman. The WCIRB has the burden and responsibility to provide adequate and substantial analysis and support for its rate filing. In this matter, the WCIRB provided an analysis of the WCAB decisions that is almost identical to its last filing despite the WCAB having made substantial changes to its decision in the Almaraz/Guzman case and the time since the prior filing. As is pointed out by my staff, the WCIRB continues to make many assumptions and temper its estimates rather than trying to thoroughly evaluate the cases or use existing data.

The Insurance Code allows me to accept, reject, or modify the WCIRB's rate filing. The Department's actuaries provided an analysis of the effect of the WCAB decisions using publicly available information and are asking me to modify the submission of the WCIRB on that basis. However, this approach does not take into account the fact that the WCIRB did not perform a proper evaluation or analysis of these decisions nor has used all the information and data available. Modifying the WCIRB's submission to this extent effectively re-works the WCIRB's filing, and I believe the WCIRB should have the opportunity to review what my staff has done, do further work-up, and submit a sufficient filing.

There are also a wide range of opinions on the effects of the WCAB decisions. The California Applicants Attorneys Association has provided information that the WCAB decisions will have a negligible effect and that other decisions of the WCAB result in decreases in permanent disability benefits that have not been analyzed by the WCIRB. The Public Members of the WCIRB, who are my appointees to the WCIRB Governing Committee, have urged only a 3.7% increase, which is less than what my staff has recommended. The WCIRB testified that currently there is no increase of permanent disability costs in the data it has reviewed attributable to the WCAB decisions. Further work-up on these issues and additional data is needed.

Finally, the WCAB decisions may change further. There is information that various appeals will or have been filed in one or both of the cases and there will be opportunity for the Courts of Appeal and the Supreme Court to review and possibly modify or reject these cases, as has been done when prior decisions of the WCAB have challenged the workers' compensation reforms. If that occurs, these decisions may have no effect on costs.

I do not entirely reject the possibility that these WCAB decisions will increase permanent disability costs. Given the lack of actual data and differing assessments, along with the economic challenges faced by California's employers, I believe the proper course of action is to further monitor the data on permanent disability costs, properly analyze the effect of these decisions, and await the resolution of further legal appeals.

Based upon these reasons, at this time I am rejecting the estimated increases to permanent disability costs.

### **3. Workers' Compensation Advisory Group**

I have conducted the first meeting of my Workers' Compensation Advisory Group and am encouraged by the various issues that such a diverse group of stakeholders can agree upon. This does not mean that the various problems will be easily solved, but there is general agreement that the workers' compensation system needs further work to make it more effective in delivering prompt and adequate benefits to injured workers in the most cost-effective way for employers. I look forward to working with this group to gain further advice on how to improve the workers compensation system and push to make the necessary changes to carry on the savings from the workers' compensation reforms.

### **4. Continuing Work on the Rate Setting Process**

This filing again supports the need for a review on how the Benchmark is determined and used so that the process does not promote inefficiency or allow insurers to pool their cost information to seek increases without being held specifically accountable for the management of their costs. My staff's recommendation to the WCIRB that a study be done on the investigatory hearing medical cost recommendations and the current effectiveness of the 2003-2004 reforms is a step in that direction. In addition, my staff will review the rate filing and hearing process itself to determine how it can more effectively be carried out to evaluate and determine the necessary costs in the system.

As I stated in my prior Decision and state again, the WCIRB has not fully or adequately prepared its proposed rate change and should have taken the time to obtain and analyze the data before coming to me for a rate request less than two months after I rejected its previous request.

Based upon my review of the Proposed Decision, the evidence provided to me, and for the foregoing reasons, I reject the filed Benchmark change requested by the WCIRB. I also reject the attached Proposed Decision to the extent that it recommends an increase in the Workers' Compensation Claims Cost Benchmark and Pure Premium Rates and is inconsistent with this Decision, and accept the remainder of that document as a portion of my final disposition of this matter.

## ORDER

I hereby accept in part and reject in part the attached Proposed Decision and Proposed Order of Hearing Officer Christopher A. Citko dated November 3, 2009 in the above entitled matter, as specifically explained above.

WHEREFORE, IT IS ORDERED that the Workers' Compensation Claims Cost Benchmark remain unchanged;

IT IS SO ORDERED THIS 9<sup>th</sup> DAY OF NOVEMBER, 2009.

A handwritten signature in black ink, appearing to read 'Steve Poizner', is written over a horizontal line. The signature is stylized and somewhat cursive.

STEVE POIZNER  
Insurance Commissioner