

**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, 2011, except where a different effective date is specified.**

FILE NUMBER REG-2010-00014

DECISION AND ORDER

In my prior Lost Cost Benchmark Decisions, I clearly promised that I would not include avoidable costs in the Benchmark. I also directed the WCIRB to improve its process for the collection and analysis of cost data. The WCIRB filing again presents an analysis of increased cost projections and again fails to provide an adequate assessment of whether, or to what extent, those increases are attributable to specific cost drivers, deficiencies in the workers' compensation reform cost controls, or other factors. Without analyzing the source of cost increases and the contribution that they make to the projected costs in the workers' compensation system, the WCIRB has not provided an adequate record to support its request to increase the Claims Cost Benchmark. Therefore, I must again reject the WCIRB's request for a rate increase.

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

The Proposed Decision in this matter includes a detailed analysis of the WCIRB filing, and the 20.4% increase recommended by the Hearing Officer is based upon the technical evidence presented at hearing. The filing consists of broad measurements of workers' compensation benefits and claim expenses. However, the WCIRB, as the sole workers' compensation rating organization representing all California workers' compensation insurers, failed to provide greater detail and quantification of the component costs in the system. The WCIRB also failed to include an evaluation of costs that can be controlled by insurers and those that are outside of insurers' control. The absence of this evidence in the record is unacceptable. Simply measuring costs and projecting them into the future is not sufficient, as it does not provide an understanding of the deficiencies in the workers' compensation system, expected increases in benefit costs, or the pass through of avoidable costs.

After prior hearings, including a special hearing of medical costs, I identified cost drivers and recommended how insurers can control those costs. I understand that the WCIRB will eventually review medical costs in greater detail through collection of transactional claim information from insurers, but that process has taken too much time to implement and is not reflected in the current filing. The WCIRB filing must provide a thorough evaluation and analysis of costs to support the increase its insurer members are requesting. Absent that critical evidence, its request cannot be approved.

Sensitivity to costs, including insurance costs, is a primary factor affecting employers' decisions to expand business and hire more California-based employees. California continues to experience record-high unemployment of over 12%, and the State cannot get out of its economic problems until unemployment dramatically drops sharply. I remain focused on ensuring that California's workers' compensation insurers are using every available opportunity to make insurance premiums as affordable as possible, since any avoidable costs can lead to unnecessary premium increases for employers and have a detrimental impact on California's employers, workforce and general economy.

2. California's Workers' Compensation System Must Be Competitive

The State of Oregon recently issued its biannual report comparing the cost of workers' compensation insurance among the various states. California rates have dropped slightly but not enough, and California is now the fifth most costly state for workers' compensation insurance. Though the Oregon report is not part of the record of this proceeding, and was not used in my determination, it illustrates the problem California faces in controlling workers' compensation costs in order to remain attractive to business.

As noted in the Proposed Decision, the California Supreme Court declined review of the Workers' Compensation Appeals Board decision to expand the use of the AMA Guides for Impairment for permanent disability benefits. The Legislature sought better control of workers' compensation costs by requiring permanent disability determinations to be consistent, uniform, and objective. Without further action by the Legislature or the Governor to clarify the limits for permanent disability rating through legislation, regulatory action, or other means, the likelihood of unpredictable costs and further litigation increases. Litigation and unpredictability generally lead to higher premiums for employers.

It has also been more than five years since California reformed its workers' compensation system, and I urge a review of the reforms to identify those changes that are successfully providing prompt delivery of benefits to injured workers and to eliminate cost-drivers as well as areas in which abuses are still occurring. This includes improving the medical controls to be more effective and to reduce frictional costs.

In my July 2009 Decision and Order, I provided 27 recommendations to address the medical cost drivers that were identified in our investigatory hearing. These include implementing pharmaceutical networks, using medical provider networks that are focused upon occupational medicine, eliminating unnecessary utilization review, and revising how medical billing and liens are handled. All of these will dramatically improve the workers' compensation system, reduce costs, and can be implemented by insurers immediately.

3. Reform of Workers' Compensation Rating System

In my January 1, 2010 Claims Cost Benchmark Order, I directed my staff to assess the filing and hearing process to determine how it can more effectively evaluate and determine the necessary costs in the system. As a result of that effort, the Proposed Decision in this matter identifies various deficiencies with the process and directs the WCIRB to implement corresponding changes. Those deficiencies include the lack of transparency regarding insurers' actual filed

rates and the premiums employers are actually charged. Based upon the comments received, the public has been misled by the process into believing that the Insurance Commissioner controls insurer rates. In fact, the Insurance Commissioner's Benchmark determination is advisory only, and workers' compensation insurers are allowed by law to implement rate changes, including increases, as they see fit.

I refuse to allow this process to provide cover to insurers making unwarranted rate increases. According to the data received by my Department, and despite my disapproval of the WCIRB's request to raise the Claims Cost Benchmark, insurers have already filed pure premium rates higher than those the WCIRB recommends. If the WCIRB had used the pure premium rates its insurer members have already filed as the starting point to this filing, the WCIRB would be requesting a pure premium rate decrease. The current process obscures that reality and, as set forth in the Proposed Decision, it will be cleaned up.

It is reassuring to see that despite the filed rate increases, competition between insurers has contained the prices actually charged to employers for workers' compensation insurance. On average, insurers have raised their premiums by 3% from 2008 to 2010. During that same time, I rejected the industry's requests for double-digit cost increases. My aggressive approach to the Benchmark has proven effective and premiums have remained stable.

I believe the workers' compensation insurance market is stable and competitive. State Fund's market share has dropped back to its historic level, and there are many more private insurers providing California employers with workers' compensation coverage. The conditions are not the same as they were at the end of the 1990's, when there were unpredictable costs and underpricing of insurance. However, the insurance system must be monitored closely to assure stability and cost-effectiveness.

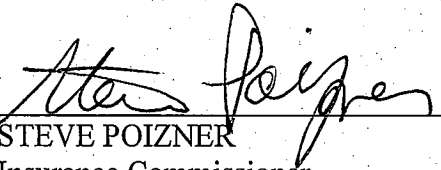
ORDER

I hereby adopt the Proposed Decision and Proposed Order of Hearing Officer Christopher A. Citko dated November 18, 2010 in the above entitled matter as my Decision except for the increase in the Workers' Compensation Claims Cost Benchmark, which is rejected.

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

IT IS FURTHER ORDERED that the directions to the WCIRB to reform the Workers' Compensation Claims Cost benchmark and Pure Premium Rates filing process as set forth in the Proposed Decision are approved.

IT IS SO ORDERED THIS 18th DAY OF NOVEMBER, 2010.



STEVE POIZNER
Insurance Commissioner