

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

PROPOSED DECISION

JULY 1, 2020 WORKERS' COMPENSATION INSURANCE RATING RULES

FILE NUMBER REG-2020-00007

In the Matter of: Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 and the California Workers' Compensation Experience Rating Plan-1995. These regulations will be effective on July 1, 2020.

SUMMARY OF PROCEEDINGS

The California Department of Insurance ("Department") held a public hearing in the above-captioned matter on May 18, 2020, at the time and place set forth in the Notice of Proposed Action and Notice of Public Hearing, File Number REG-2020-00007, dated April 21, 2020. A copy of the Notice is included in the record. The record closed on May 18, 2020.

The Department distributed copies of the Notices to persons and entities referenced in the record. The Notices included a summary of the proposed changes and instructions for interested persons who wanted to view a copy of the information submitted to the Insurance Commissioner in connection with the proposed changes. The Workers' Compensation Insurance Rating Bureau ("WCIRB") submitted a filing letter and related documents on April 20, 2020, which were available for inspection by the public at the Oakland office of the Department and were available online at the WCIRB's website, www.wcirb.com.

The WCIRB's filing proposes amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 and California Workers' Compensation Experience Rating Plan-1995.

The Department conducted a telephonic hearing on May 18, 2020, and accepted written comments by facsimile, electronic mail, and mail. At the telephonic hearing, the Hearing Officer announced that the record would remain open until 5:00 p.m. on May 18, 2020, to enable interested persons to submit additional written comments. The matter having been duly heard and considered, the Department now presents its review, analysis, and Proposed Decision and Order.

**REVIEW OF PROPOSED CHANGES TO THE WORKERS' COMPENSATION
UNIFORM STATISTICAL REPORTING PLAN-1995 AND THE CALIFORNIA
WORKERS' COMPENSATION EXPERIENCE RATING PLAN-1995**

Amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 (USRP)

The WCIRB proposed amendments to the USRP to be effective on July 1, 2020 and applied to claims with a required date of reporting to the WCIRB on or after August 1, 2020 and to exposure information with a required date of reporting to the WCIRB on or after November 1, 2020. The proposed amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

1. Amendments to Part 3, Standard Classification Procedures, Section III, General Classification Procedures – Addition of Rule 7, Coronavirus Disease 2019 (COVID-19).

At the Department's telephonic hearing on May 18, 2020, the WCIRB presented its proposed changes to permit, during a statewide California COVID-19 stay-at-home order: (1) a single division of an employee's payroll between Classification 8810, *Clerical Office Employees*, and a non-standard exception classification when the employee's work is exclusively clerical in nature, and (2) payments made to an employee when the employee is performing no duties of any kind in service of the employer to be excluded from payroll when the payments are equal to or less than the employee's regular rate of pay. The Department reviewed the WCIRB's proposed amendments as well as numerous written and oral comments from stakeholders in support of the proposed amendment. There were no comments in opposition to the proposed amendments. After careful consideration of all comments submitted to the Department, as well as a review of the proposed changes, the undersigned recommends that the proposed amendments be adopted. The proposed changes foster consistency between an employer's actual workplace risk during the COVID-19 stay-at-home order and premium basis, and the undersigned recommends that they be adopted.

2. Amendments to Part 4, Unit Statistical Report Filing Requirements, Section IV, Exposure Information, Rule 1, Classification Code, and Rule 4, Exposure Amount

The WCIRB proposes amendments to require insurers to (1) report special code 0012 for payments excluded from remuneration pursuant to Part 3, Standard Classification System, Section III, General Classification Procedures, Rule 7, Coronavirus Disease 2019 (COVID-19), subrule b, and (2) report payments excluded from remuneration pursuant to Part 3, Standard Classification System, Section III, General Classification Procedures, Rule 7, Coronavirus Disease 2019 (COVID-19), subrule b. The Department reviewed the WCIRB's proposed amendments and received no objections to them. The proposed amendments provide a mechanism to capture data relating to rules for payments that are subject to special rules under these regulations as a result of coronavirus disease (COVID-19). After careful consideration of all comments submitted to the Department, as well as a review of the proposed changes, the undersigned recommends that the proposed amendments be adopted. The proposed changes would require insurers to report payments excluded from remuneration pursuant to Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 7, *Coronavirus Disease 2019* (COVID-19).

3. Amendments to Part 4, Unit Statistical Report Filing Requirements, Section V, Loss Information, Rule B, Loss Data Elements, Subrule 4, to (1) add Catastrophe Number 12 for the reporting of COVID-19 claims, and (2) eliminate the reference to claims arising from the commercial airline hijackings of September 11, 2001, as obsolete.

The Department reviewed the WCIRB's proposed amendments and received no objections to them. These proposed amendments enable the tracking of data related to COVID-19 and eliminate an obsolete provision. The undersigned recommends that the proposed amendments be adopted.

4. Amendments to Appendix III, Injury Description Codes, Section B, Nature of Injury (Positions 3-4), Section C, Cause of Injury (Positions 5-6), to add a Nature of Injury code, and Appendices II and III, to add a row for COVID-19 payments made during a statewide California stay-at-home order and define "pandemic."

The Department reviewed the WCIRB's proposed amendments and received no objections to them. The proposed changes create novel reporting categories so that the WCIRB may track claims specific to COVID-19 injury. After careful consideration of all comments submitted to the Department, as well as a review of the proposed changes, the undersigned recommends that the proposed amendments be adopted.

Amendments to the California Workers' Compensation Experience Rating Plan– 1995 (ERP)

The WCIRB proposed amendments to the ERP to be effective on July 1, 2020 and applied to claims with a required date of reporting on or after August 1, 2020. The proposed amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

The Department reviewed the WCIRB's proposed amendments and received no objections to the proposed amendments. The proposed amendments will (1) specify that all claims directly arising from a diagnosis of Coronavirus disease 2019 (COVID-19) shall not be reflected in the computation of an experience modification, and delete reference to claims from certified terrorism losses as defined by the Terrorism Risk Insurance Act of 2002 as obsolete. The proposed amendments are reasonable and consistent with the purpose of the ERP. This proposed decision recommends, therefore, that the amendments be approved.

PROPOSED ORDER

IT IS ORDERED, by virtue of the authority vested in the Insurance Commissioner of the State of California by California Insurance Code sections 11734, 11750(a), 11750.3, 11751.5, and 11751.8 that the proposed revisions to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 and the California Workers' Compensation Experience Rating Plan-1995 filed by the WCIRB and Sections 2318.6, 2353.1 and 2354 of Title 10 of the California Code of Regulations are hereby amended and modified in the respects specified above; and,

IT IS FURTHER ORDERED that these regulations shall be effective July 1, 2020.

I HEREBY CERTIFY that the foregoing constitutes my Proposed Decision and Proposed Order in the above entitled matter as a result of my review of the record and the comments received and I hereby recommend its adoption as the Decision and Order of the Insurance Commissioner of the State of California.

June 3, 2020



Patricia Hein

Attorney

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**

In the Matter of: Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 and the California Workers' Compensation Experience Rating Plan-1995.

On April 13th and May 15th, I issued bulletins ordering insurers to lower premiums commensurate with reduced risks in the workplace due to the coronavirus pandemic (COVID-19). I am satisfied that these proposed changes will enable insurers to adjust premium to align with the risk and allow the Department to track data relating to COVID-19 claims. I hereby approve the proposed amendments. These regulations will be effective on July 1, 2020.

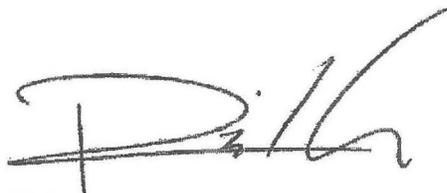
FILE NUMBER REG-2020-00007

DECISION AND ORDER

I hereby adopt the Proposed Decision and Proposed Order of Patricia Hein, dated June 3rd, 2020, in the above entitled matter as my Decision.

WHEREFORE, IT IS ORDERED that the WCIRB amend the California Workers' Compensation Uniform Statistical Reporting Plan-1995 and the California Workers' Compensation Experience Rating Plan-1995 as set forth in the Proposed Decision.

IT IS SO ORDERED THIS 15 DAY OF JUNE, 2020.



RICARDO LARA
Insurance Commissioner