STATE OF MAINE
WORKERS' COMPENSATION BOARD
OFFICE OF EXECUTIVE DIRECTOR/CHAIR
442 CIVIC CENTER DRIVE, SUITE 100
27 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0027

JANET T. MILLS
GOVERNOR

JOHN C. ROHDE
EXECUTIVE DIRECTOR

October 31, 2024

Senator Michael Tipping, Chair
Representative Amy Roeder, Chair
Joint Standing Committee on Labor and Housing
100 State House Station
Augusta, ME 04333-0100

Re: Resolves 2023, c. 139; October Update

I. Introduction

As mentioned in the September report, the 1992 Blue Ribbon Commission ("BRC") identified two "equally important" objectives for Maine's workers' compensation system: "substantial protection for workers who have suffered work-related injuries and diseases at an affordable cost to employers . . ." (*Report of the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System ["BRC Report"]*, August 31, 1992, p. 3.)

The September report discussed, in light of the effects of inflation, the substantial protection objective. This monthly update starts the discussion with respect to affordability.

II. Workers' Compensation Coverage

With limited exceptions, Maine employers are required to "secure the payment of compensation with respect to all employees by purchasing a workers' compensation policy or self-insuring." 39-A M.R.S.A. § 401(1).

A. Self-insured Employers

Employers can self-insure individually or as a group. Self-insured employers must obtain authorization from the Bureau of Insurance by proving that they have the ability to pay benefits required by the Workers' Compensation Act (the "Act"). In 2022, self-insured employers[1] accounted for approximately 32% of Maine's workers' market as measured by estimated premiums.

> The estimated standard premium for individual self-insured employers is determined by multiplying the advisory loss cost by a factor of 1.2 as specified in

[1] In 2022, 1,223 employers were self-insured; 1,172 in groups and 51 individually.

statute, multiplying that figure by the payroll amount, dividing the result by 100, and then applying an experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

Annual Report on the Status of the Maine Workers' Compensation System, February 2024, p. B13.

B. Insured Employers

Most employers[2] opt to purchase workers' compensation insurance policies by paying premiums to insurance companies. Insured employers accounted for the remaining 68% of the market in 2022.

Insurance premiums are designed to compensate injured workers for lost wages, medical treatment, vocational rehabilitation and, in some cases, settlements; to pay for managing and defending claims; to cover the cost of insurance companies' general overhead; and to pay for profits and other charges. Premiums paid by employers are based on advisory loss cost filing submitted by the National Council on Compensation Insurance ("NCCI"). (Loss cost filing are discussed further, below.)

While there are a number of elements that factor into the premium an employer will pay, two essential components are payroll and job classification code(s). [3] Payroll, divided by $100 and multiplied by the insurer's class code loss cost results in the premium paid by an employer. Other adjustments (e.g., merit or experience ratings and expense constants[4]) are also plugged in to the premium equation.

III. Loss Cost Filings

Premiums paid by employers are based on loss cost filings submitted by NCCI to the Bureau of Insurance. These include annual advisory loss cost filings and, when necessary, law only filings in response to changes in the law. NCCI's loss cost filings apply to insured employers and are based on claims data NCCI gathers from insurance companies. NCCI does not receive claims data from self-insured employers which establish their own rates pursuant to the plans of operation approved by the Bureau of Insurance.

A. Annual Advisory Loss Cost Filings

Each year, NCCI, creates updated class code rates for hundreds of occupational classifications across five industry groups and submits them to the Bureau of Insurance in an advisory loss cost filing. These class code rates are subject to review and approval by the Bureau of Insurance. Once approved, the rates for each class code are used by workers' compensation

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[2] According to the Small Business Association Office of Advocacy, in 2022, there were approximately 33,300 businesses with 1-499 employees in Maine.
[3] Class codes are based upon the type of work being done by the employee for whom coverage is being secured. For example, class code 8810 applies to clerical office employees and 8835 applies to home healthcare providers.
[4] The expense constant is the same for all policies and is intended to cover expenses common to all policies.

insurers as part of their premium calculations. These loss costs pertain to benefits (e.g., lost wages and medical expenses) and expenses insurers incur related to the handling of workers' compensation claims. Annual advisory loss cost filings are usually submitted early in the calendar year and approved effective April 1 of each year.

In its analysis, NCCI uses data, including the number of injuries and the severity of injuries, from three prior policy years to estimate the future cost of benefits and adjustment expenses for the upcoming policy year. If, for example, the expectation is that there will be fewer and/or less severe injuries in the next policy year, NCCI's loss cost recommendation will be to decrease rates. Conversely, if the expectation is that there will be more injuries and/or more expensive injuries in the coming policy year, the loss cost recommendation would be to increase rates. In its most recent filing, effective April 1, 2024, NCCI recommended a -19.0% loss cost decrease.

After NCCI submits its advisory loss cost filing and the Bureau of Insurance approves it, each workers' compensation insurer approved to do business in Maine must submit its own filing. These filings set rates, by class code, and include the insurer's loss cost multiplier.[5] These filings determine the final rates that insurance companies will offer to employers for workers' compensation coverage.

B. Law Only Loss Cost Filings

Another role NCCI performs is to determine the cost impact of changes to the law. Depending on the timing of the change, these estimates can be included in the annual advisory loss cost filing or can be recommended in "law only" filings that adjust rates in between the annual filings. For example, legislative amendments were enacted in 2019 and were effective on January 1, 2020. A law only filing was required because the effective date of the amendments was prior to the date of the next annual loss cost filing, April 1, 2020.

Loss cost filings, in and of themselves, cannot answer the question of whether a workers' compensation system is "affordable" or whether that system's benefits are "adequate." For example, when the Board's LD 1896 stakeholder group met in 2023, it asked NCCI to estimate the cost impact of a proposal to change the existing cost-of-living adjustment. NCCI's preliminary estimate, based on the concept outlined by the stakeholder group, was a prospective[6] impact of +1.7% to +2.4%.

In light of NCCI's estimate, participants opposed to change contended that if the proposal was enacted, the cumulative impact to loss cost filings from the change in 2019 (+3.9%) and the LD 1896 proposal (at the high end, +2.4%) would be +6.3%. Others noted that adding +2.4% to the cumulative advisory loss cost changes from April 1, 2019, through April 1, 2023, would still mean an overall change of -23.1%.

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[5] Loss cost multipliers include expenses related to issuing policies, general expenses, licenses, fees, taxes, and, profit.

[6] The concept outlined by the stakeholder group included a retroactive component. NCCI does not provide estimates of the cost of proposals that apply retroactively. For purposes of rate making (and loss cost filings) changes to the Act are considered retroactive if they affect dates of injury prior to the effective date of a change.

Rate/Loss Cost	Effective Date	Filed % Change	Approved % Change	Filing Type	Applies To	Filing Action
Loss Cost	4/1/2019	-7.5	-7.5	Experience	New/Renewal	Approved
Loss Cost	1/1/2020	3.9	3.9	Law Only	New/Renewal	Approved
Loss Cost	4/1/2021	0.3	0.3	Experience	New/Renewal	Approved
Loss Cost	4/1/2022	-10.3	-10.3	Experience	New/Renewal	Approved
Loss Cost	4/1/2023	-11.9	-11.9	Experience	New/Renewal	Approved

Limiting the affordability and adequacy analysis to just the impact of law changes creates an incomplete picture because it fails to take into account the downward trend of rates in recent years.[7] Also, while relevant, the overall loss cost trend, by itself, does not establish whether benefits are adequate. The reason, in part, is because loss cost filings are based on estimates of how many claims will be filed in a coming policy year and how serious those claims are expected to be. Unless those factors remain exactly the same, system costs will change by a smaller or larger amount. For example, if a proposal with a +2.4% impact is adopted, and the overall rate decreases by -7.5%, the net effect will be -5.1%. Conversely, if the frequency and/or severity of injuries is estimated to increase by +7.5%, the overall impact would be +9.9%.

Annual loss cost filings and, when applicable, law only filings, are essential components of the premium setting process. While, when viewed over time, they can indicate whether costs are more or less affordable today than previously, they cannot, either individually or in the aggregate answer the questions of whether a workers' compensation system is affordable or whether that system provides adequate benefits.

IV. Interstate comparisons

In 1992, the BRC believed Maine's system could "provide income support that injured workers require as a result of their injuries at a cost no greater than the median cost in other states." *Report of the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System ["BRC Report"]*, August 31, 1992, p. 3.

The BRC did not define what it meant by "no greater than the median cost in other states," nor did it discuss how it fits in with respect to the twin objectives of an affordable system that provides adequate benefits. Still, this phrase is invoked, frequently in conjunction with a report produced by Oregon's Department of Consumer and Business Services, to argue that the goals of the BRC have not been met. Essentially, this interpretation defines "median cost" as a moving target. Each year (or, in the case of the Oregon report, every other year) an assessment would need to be made regarding where Maine ranks with respect to other jurisdictions. This would eliminate the balancing of adequacy and affordability and replace it with a determination of

[7] As well as the overall change since 1992. According to the Bureau of Insurance, prior to the -19% decrease in 2024, loss costs were almost 69% lower in 2023 than they were in 1993. *Annual Report on the Status of the Maine Workers' Compensation System*, February 2024, p. B5.

where Maine stands vis-à-vis other states regardless of whether benefits are adequate or costs affordable.

There are other possible interpretations. One is that the BRC was referring to the "median cost" as it existed when they wrote their report. Viewed in this light, Maine's 2022 index (1.67) is lower than the least expensive state (North Dakota, 1.97) in the 1992 Oregon report. While Maine's system, by this measure, is more affordable than it was in 1992[8], it does not necessarily mean that comparisons between states should no longer play a role in the affordability/adequacy analysis.

Others interpretations include comparing Maine to states with similar laws; comparing states within a specific geographic region; comparing states that are similar with respect to population demographics and/or industry mix; and, perhaps a different measure altogether, such as costs per $100.00.

Similar to loss cost filings, comparisons between states cannot, by themselves, answer whether a workers' compensation system is affordable or provides adequate benefits. They may provide useful data for such an analysis, but, if they do, caution is necessary because of differences between states. These include differences in: The benefits available in the event of an injury; the mix of industries; injury rates and severity; wages; employee demographics; how the system is administered; and, issues related coverage.

V. CONCLUSION

Whether or not workers' compensation is "affordable" is an important question. It is also one that is not easy to define. There is no single data point that can be used to answer this question. The Board will continue to weigh the roles of loss costs, interstate comparisons and the availability of other measures that can assist in achieving a balance between adequacy and affordability.

Finally, as mentioned during the previous update, it is important to remember that both adequacy and affordability are impacted by the availability and efficacy of return-to-work and employment rehabilitation programs.

Submitted by:

Glenn Burroughs
Director, representing Labor
Workers' Compensation Board

Lynne Gaudette
Director, representing Management
Workers' Compensation Board

[8] Maine' s index value decreased by 67% from 1992 to 2022.

John C. Rohde
Executive Director
Workers' Compensation Board

Cc: Senator Matthea Daughtry
Senator Matthew Pouliot
Representative Dick Bradstreet
Representative Gary Drinkwater
Representative Joe Galletta
Representative Valli Geiger
Representative Traci Gere
Representative Marc Malon
Representative Ronald Russell
Representative Charles Skold
Representative Mike Soboleski
Steven Langlin - OPLA Analyst
Rachel Tremblay - OFPR Analyst
Maria Rodriguez - Committee Clerk