

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

PROPOSED DECISION

**JANUARY 1, 2019 WORKERS' COMPENSATION INSURANCE
CLASSIFICATION AND RATING RULES**

FILE NUMBER REG-2018-00008

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, Miscellaneous Regulations for the Recording and Reporting of Data-1995, and the California Workers' Compensation Experience Rating Plan-1995. These regulations will be effective on January 1, 2019, except for the changes to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 that will be effective on July 1, 2019, or January 1, 2020.

SUMMARY OF PROCEEDINGS

The California Department of Insurance ("Department") held a public hearing in the above-captioned matter on August 3, 2018, at the time and place set forth in the Notice of Proposed Action and Notice of Public Hearing, File Number REG-2018-00008, dated July 5, 2018. A copy of the Notice is included in the record. On August 21, 2018, the Department issued a Notice of Availability of Revised Text along with proposed changes to the text of the regulations. The record closed on September 5, 2018.

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 filing letters and related documents on June 29, August 1, and August 3, 2018, which were available for inspection by the public at the San Francisco office of the Department and were available online at the WCIRB's website, www.wcirb.com.

The WCIRB's filings propose amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995, Miscellaneous Regulations for the Recording and Reporting of Data-1995, and California Workers' Compensation Experience Rating

Plan-1995.

The Department accepted testimony and written comments at a hearing in San Francisco on August 3, 2018. The Hearing Officer announced that the record would remain open, providing 15 days following the issuance of a notice for additional written comments. The 15 day comment period closed on September 5, 2018. 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, THE MISCELLANEOUS
REGULATIONS FOR THE RECORDING AND REPORTING OF DATA-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 January 1, 2019 and applied to a policy with an effective date on or after January 1, 2019, except amendments that will be effective on January 1, 2020. Those amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

1. Proposed amendments to Private School Classifications: amend existing Classifications 8868 and 9101, and establish new Classifications 8869, 8871, 8872, 8873, 8874, 8876, and 9102.

At the Department's hearing on August 3, 2018, the WCIRB presented its proposed changes to reclassify the current private schools classifications, amending Classifications 8868 and 9101 and establishing new Classifications 8869, 8871, 8872, 8873, 8874, 8876, and 9102. The WCIRB states that the purpose of these proposed changes was to group homogeneous businesses with similar operations and exposure to workers' compensation losses. The two classifications that currently exist encompass operations with vastly different exposures.

At the hearing, Bruce Wick gave oral comments on behalf of the California Professional Association of Specialty Contractors. Jacquie Dillard-Foss gave oral comments on behalf of the California Supportive Living Network in opposition to the proposed amendments regarding Classifications 8873 and 8874. Dan Savino gave oral comments on behalf of the Association of Regional Center Agencies (ARCA) in opposition to the proposed amendments. Teresa Anderson, the Public Policy Director for The Arc and United Cerebral Palsy California Collaboration, also provided comments in opposition to the proposed changes concerning Classification 8868.

The Department also received written comments in support of proposed amendments. The California Association of Private School Organizations submitted a comment indicating

its support for the proposed changes amending or establishing Classifications 8869, 8871, 8872, 8873, 8874, 8876(1), and 8876(2).

The Department received over 50 written comments regarding the proposed amendments. These commenters consist of various organizations that represent individuals with intellectual and developmental disabilities. They recommend rejecting the reclassifications pertaining to Classification Code 8868, particularly those that will be reclassified under the proposed Classification Codes 8873, 8874, and/or 8876, on the basis that the amendments would cause a major increase in workers' compensation rates for the current fiscal year and subsequent years. These organizations serve individuals who often have complex medical, psychological, and cognitive conditions, tend to be government-funded, and operate on very fragile financial margins with a multitude of unfunded mandates, inadequate rates, and external cost pressures. They do not have the ability to raise rates or otherwise generate revenue to address increasing costs and expressed concerns that they may be forced to reduce services or close their operations as a result of these classification code changes.

A commenter notes that their overall costs continue to increase while rate reimbursements have increased by only 10 percent in the last five or more years.

A commenter indicated his organization's insurance rates were already exceedingly high and these changes will cause a major increase in workers' compensation rates.

Another commenter said their organization has done an excellent job maintaining a low experience modification rate and operating with very low overhead, and that this change poses a serious concern to their agency, employees, and participants.

These commenters recommend that, if the changes to Classification 8868 proceed despite their objections, the following two measures be implemented to help mitigate the potential harm:

- The imposition of a 10% limit on any pure premium rate yearly increase, and
- An effective date of July 1, 2019 as to new and renewal policies with an anniversary date on or after July 1, 2019.

A commenter noted that these two changes would allow them to budget for increased workers' compensation costs at the beginning of the fiscal year and enable them to seek additional funding for rate relief from the Governor and Legislature through the fiscal year 2019-20 budget process.

Another commenter from ARCA states that the WCIRB's findings underlying their recommendation to reclassify within separate the classifications 8873 and 8874 are fundamentally flawed and antithetical to a functional insurance system. The commenter objects to the establishment of different insurance rates due to disability. The commenter also notes that the loss-to-payroll ratio is significantly different between the subgroups and believes this is an invalid comparison that will result in a significant variance. She

believes that a proper comparison would be based on number of hours worked, not dollars earned, to avoid a bias against the lower-earning population subset. Finally, the commenter notes the injuries identified in the new classification subgroup differ significantly from other subgroups. The commenter objects to segmenting the more expensive population segments from larger groups, resulting in a risk that is not spread across a large population. The commenter notes that these proposed changes will result in underfunding a system that serves over 300,000 people with developmental disabilities and their families.

The WCIRB submitted a response to ARCA's comments in a letter dated August 17, 2018, stating that the proposal to reclassify certain businesses is not based on the disability status of the clients served, hourly wage levels, or differences in the types of injuries sustained by workers in these industries. The WCIRB's proposal is based on actuarial data indicating that for pure premium rulemaking and experience rating purposes, these businesses have similar operations and a similar risk of exposure. The WCIRB states that businesses are not classified based upon the clients they serve but on the operational activities of the business. This is consistent with the purpose of the classification system, which is to combine businesses with relatively similar operations and exposures into homogenous classifications to develop credible advisory pure premium rates and experience rating values that are tailored to the unique experience of each type of business. Regarding ARCA's comments as to loss to payroll ratios, the WCIRB stated that although hourly wage differentials may drive differences in loss to payroll ratios, they do not explain all the differences in differentials among the proposed new classifications. Thus, the fundamental differences in the nature of the business operations are the basis for the new classifications.

The WCIRB also noted ARCA's concerns that the mix of injuries is a basis for the WCIRB's proposed reclassifications. The WCIRB responded by noting that although there are differences in the causes of injuries to employees among the proposed classifications, that information is an indicator of the differences in the nature of the groups' operations and underlying exposures, not the basis of the proposed new classifications. Finally, the WCIRB responded to ARCA's concern about segregating groups of employers with high cost levels from larger groups of employers. The WCIRB states that the cost of an employer's workers' compensation insurance should be commensurate with the expected cost of employees' workplace injuries arising from the employer's business operations, which is consistent with proposed reclassifications.

After careful consideration of all comments received, the undersigned for this proposed decision recommends that the proposed amendments be adopted. The proposed amendments to Classifications 8868 and 9101, and the creation of new Classifications 8869, 8871, 8872, 8873, 8874, 8876, and 9102, as proposed by the WCIRB, are consistent with the purpose of the classification system. "Classification system" means "a plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders." (Ins. Code § 11730, subdivision (a).) The current grouping of operations under Classifications 8868 and 9101 include non-homogenous groups of employers with vastly different exposures, which is

inconsistent with the purpose of the uniform classification system. The WCIRB's proposal is based upon actuarial data and its comprehensive review of businesses assigned to existing Classifications 8868 and 9101. In its study, the WCIRB addressed the various operations that were included in Classifications 8868 and 9101 and identified subgroups that were distinct and relatively homogenous from the perspective of workers' compensation exposure. The WCIRB's proposal to add seven subgroups will provide uniformity in grouping operations with similar exposures together, which is consistent with the statutory mandate of developing a uniform system.

Most of the commenters expressed concern that the reclassifications would result in an increase in premium. This concern largely stems from a common misunderstanding about the important distinction between pure premium rates and charged rates. While it is true that the pure premium rates for certain reclassified subgroups will likely increase, the amount of charged premiums will not necessarily increase. Insurers are free to charge any rate they wish with three exceptions—the rate must be adequate to cover the insurer's losses and expenses, the rate cannot be unfairly discriminatory, and it cannot tend to create a monopoly in the market. (Ins. Code §§ 11732, 11732.5, and 11735.) Insurers adjust rates based on loss history and other factors, such as the nature of the risk. If a particular operation carries a higher risk of injury than other operations that fall within that classification, it is likely that insurers have already taken the higher risk into account and charge more premium for that risk. Indeed, to the extent insurers currently possess data that suggests different types of school environments create different levels of risk, insurers already take this data into consideration when establishing the ultimate charged rate for any particular employer.

The proposed amendments are reasonable and consistent with the purpose of the USRP. California's classification system's uniformity is based actuarial data. Insurance Code § 11734, subdivision (b), requires the commissioner to designate a rating organization to assist him or her in gathering, compiling, and reporting relevant statistical information, and to develop a classification system. Subdivision (c) requires the designated rating organization to develop and file manual rates, subject to the approval of the commissioner, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and any classification systems that may be in effect. The WCIRB's proposal is consistent with the concept of grouping businesses with relatively similar operations and exposures into homogenous classifications that are large enough so that sufficient loss and payroll experience is generated to develop credible advisory pure premium rates and experience rating values for each classification.

Although insurers are already able to charge higher rates for the affected business operations with greater risk exposure, the commenters' concerns regarding the impact of implementation of the proposed changes are acknowledged and appreciated. The reclassifications could conceivably have an impact on businesses that serve a large community of individuals with intellectual and developmental disabilities. This proposed decision recommends that the amendments be, therefore, approved as follows:

- a. The proposed changes will be effective July 1, 2019 as to new and renewal policies with an anniversary date on or after July 1, 2019, and
- b. The pure premium rate adjustments will be limited to 10% per year for five years, after which the pure premium rate adjustments will be limited to 25% per year.

Further, the WCIRB is directed to study the impact of these classifications changes on charged rates for these new classifications and to report its findings annually beginning on July 1, 2020.

2. Other Proposed Amendments

The Department has reviewed the WCIRB's other proposed amendments to the USRP and received no objections as to those items. As to those items, the proposed amendments are reasonable and consistent with the purpose of the USRP. This proposed decision recommends, therefore, that the amendments be approved.

WCIRB's submission of corrections to filing

On September 24, 2018, the WCIRB submitted revised D-ratio values to Table I of the Experience Rating Plan to correct a computational error. The impact of this correction is very minor with almost all D-ratios not impacted at all or impacted by less than 0.5%. These corrections are demonstrably necessary in order to properly and accurately compute the D-ratio values. This proposed decision recommends, therefore, that the D-ratios proposed by the WCIRB as revised be approved.

Amendments to the Miscellaneous Regulations for the Recording and Reporting of Data-1995

The WCIRB proposed amendments to the Miscellaneous Regulations for the Recording and Reporting of Data-1995 to be effective on January 1, 2019 and applied to a policy with an effective date on or after January 1, 2019. Those 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 are reasonable and consistent with the purpose of these Miscellaneous Regulations for the Recording and Reporting of Data-1995. This proposed decision recommends, therefore, that the amendments be approved.

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

The WCIRB proposed amendments to the ERP to be effective on January 1, 2019 and applied as of the rating effective date of a risk on or after January 1, 2019. Those 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 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, the Miscellaneous Regulations for the Recording and Reporting of Data-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

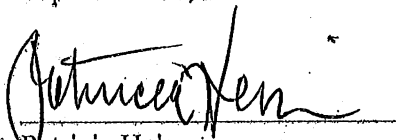
IT IS FURTHER ORDERED that the amendments to Classifications 8868 and 9101, establishing new Classifications 8869, 8871, 8872, 8873, 8874, 8876, and 9102, will be effective July 1, 2019 as to new and renewal policies with an anniversary date on or after July 1, 2019, and that the pure premium rate adjustments shall be limited to 10% per year for five years, after which the pure premium rate adjustments shall be limited to 25% per year.

IT IS FURTHER ORDERED that the WCIRB study the impact of these classifications changes on charged rates for these new classifications and to report its findings annually beginning on July 1, 2020.

IT IS FURTHER ORDERED that these regulations shall be effective January 1, 2019, except for those changes to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 that will be effective on July 1, 2019, or January 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.

September 25, 2018



Patricia Hein
Attorney IV

**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, Miscellaneous Regulations for the Recording and Reporting of Data-1995, and the California Workers' Compensation Experience Rating Plan-1995. These regulations will be effective on January 1, 2019, except those provisions that will be effective on January 1, 2020.

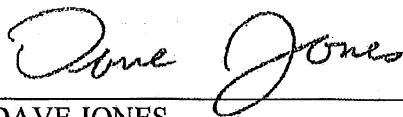
FILE NUMBER REG-2018-00018

DECISION AND ORDER

I hereby adopt the Proposed Decision and Proposed Order of Patricia Hein, dated September 25, 2018, in the above entitled matter as my Decision except for the proposed amendments to Classifications 8868 and 9101 and the proposed establishment of Classifications 8869, 8871, 8872, 8873, 8874, 8876, and 9102; after weighing and considering the evidence and arguments, I conclude it is unreasonable to amend Classifications 8868 and 9101 and establish Classifications 8869, 8871, 8872, 8873, 8874, 8876, and 9102 and I therefore decline to adopt those classifications

WHEREFORE, IT IS ORDERED that, except for those proposed amendments to the classifications that I decline to adopt in this Decision and Order, the WCIRB amend the California Workers' Compensation Uniform Statistical Reporting Plan-1995, Miscellaneous Regulations for the Recording and Reporting of Data-1995, and the California Workers' Compensation Experience Rating Plan-1995 as set forth in the Proposed Decision.

IT IS SO ORDERED THIS 12th DAY OF OCTOBER, 2018.



DAVE JONES

Insurance Commissioner