



STATE OF NEW YORK
INSURANCE DEPARTMENT
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**Revised Circular Letter No. 6 (2008)
May 5, 2008**

TO: All insurers authorized to write workers' compensation insurance in New York; workers compensation rate service organizations; and the State Insurance Fund.

RE: 2008 Workers' Compensation Rate Filings

STATUTORY REFERENCES: SECTIONS 2304 AND 2305 OF THE INSURANCE LAW

The purpose of this revised Circular Letter is to provide advice to insurers authorized to write workers' compensation insurance in New York ("insurers") about recent changes to the New York Insurance Law regarding workers' compensation rates and to provide guidance to rate service organizations ("RSOs") and insurers with respect to the new loss-cost approach for workers' compensation rates. This Circular Letter also provides instructional guidance regarding the 2008 procedures for filing and obtaining approval of rates for workers' compensation insurance, as mandated by Chapter 11 of the Laws of 2008.

In March 2007, the Legislature enacted Chapter 6 of the Laws of 2007, which reformed New York's workers' compensation system. Chapter 6 added a new Insurance Law § 308(g), requiring the Superintendent of Insurance (the "Superintendent") to issue a report addressing, among other issues, the rate-making process for workers' compensation insurance and the functioning of the New York Compensation Insurance Rating Board ("CIRB"), which is the only New York licensed workers' compensation RSO. The Superintendent's report recommended that New York move from its current "administered pricing" approach to a "loss costs" system.

In January 2008, the Legislature enacted Chapter 11 of the Laws of 2008, which implemented the Superintendent's recommendations, and brought New York's workers' compensation system into line with a majority of the states in the country.

Prior to the enactment of Chapter 11, CIRB, an unincorporated association consisting of insurers and the State Insurance Fund (“SIF”), was designated as the RSO to collect statistical and financial data from each of its insurer members and SIF, and to summarize the information and develop and file manual rates, rating plans, and other statistical information for workers’ compensation insurance. Each year, CIRB submitted a rate filing to the Department and the Superintendent issued a decision concerning the rate proposed by CIRB. The CIRB rate filing or an amended rate filing was traditionally approved effective October 1 of the year in which it was filed, and was utilized by almost all workers’ compensation insurers.

Chapter 11 of the Laws of 2008, effective January 31, 2008, established a new method for setting workers’ compensation rates in New York. This legislation provides for a new, two-step process for establishing workers’ compensation insurance rates.

First, the legislation added a new Insurance Law § 2304(g), which defines the term “loss costs” for workers’ compensation insurance purposes as “that portion of a rate intended to represent the anticipated costs of claim payments and loss adjustment expenses associated with such claim payments, and may include one or more trend factors.” The statutory definition specifies that “loss costs do not include provisions for insurer specific expenses (other than loss adjustment expenses), such as acquisition costs, overhead and taxes, or profit, but reflect industry-wide losses and directly related expenses.” Insurance Law § 2305(e) requires the designated RSO to file “loss costs” with the Superintendent, instead of fully developed rates, on or before June 1, or on an earlier date as set by the Superintendent.

Second, in order to establish a proper rate, each insurer must separately file its loss cost multiplier (“LCM”) with the Superintendent. Insurance Law § 2305(b) provides that the Superintendent shall define LCM by regulation, and the Superintendent will be doing that for future years, but the short time-frame to implement rates for 2008 precludes the promulgation of a non-emergency regulation on a timely basis. An LCM, as discussed below, reflects each insurer’s individual expenses and underwriting skills.

As used in this circular letter:

(1) “Expenses” are that portion of a workers’ compensation insurance rate attributable to acquisition, field supervision, collection, general overhead, taxes, licenses, and fees. Expenses do not include loss and loss adjustment expenses, which are included in loss costs.

(2) “Loss Cost Multiplier” or “LCM” means a factor including an insurer’s Expenses relating to workers’ compensation insurance, by which the insurer adjusts, via multiplication, the approved loss costs to arrive at its filed rates. An insurer’s LCM may include a Loss Cost Modifier.

(3) “Loss Cost Modifier” means an adjustment to (or deviation from) the approved loss costs that represents an insurer’s own loss and loss adjustment expense experience.

The rate for each classification is calculated by multiplying the approved loss costs by the LCMs filed with and approved by the Superintendent for the individual insurer.

Although SIF is not required to file its rates with the Department, Insurance Law § 2339(s) provides that SIF shall not charge an insured any rate, or receive from an insured any rate in excess of the total of: (1) the applicable loss cost approved by the Superintendent; (2) the applicable expense component of the state insurance fund; and (3) a fair and reasonable differential charge, which takes into consideration the nature and hazards of certain specified factors regarding the insured.

A. REQUIRED RSO ACTION UNDER THE LOSS COST APPROACH TO RATE FILING

For the 2008 Rate filings, CIRB has been designated as the RSO. As previously stated, CIRB will no longer develop or file final workers’ compensation rates that contain provisions for Expenses (other than loss adjustment expenses). Instead, CIRB, as the workers’ compensation RSO, will develop and file for approval with the Superintendent a rate filing containing only loss costs and supporting actuarial and statistical data (the “Reference Filing”). In order to facilitate timely implementation of workers’ compensation rates, the Superintendent has set May 15, 2008 as the date by which CIRB must submit the Reference Filing to the Department.

A Reference Filing must contain the loss costs and the underlying loss data and other supporting actuarial information for any calculations or assumptions underlying those loss costs. After a Reference Filing has been filed with the Department and approved, the RSO may thereafter provide participating insurers and SIF with a copy of the approved Reference Filing.

B. REQUIRED INSURER ACTION UNDER THE LOSS COST APPROACH TO RATE FILING

Each insurer must individually determine the final rates that it will file for approval with the Department. This will be the result of the independent company decision-making process of each insurer.

Pursuant to Insurance Law § 2306, the loss costs filed by CIRB becomes the rates for its member companies, subject to an Insurer’s filing of its LCM, upon the effective date of the approved Reference Filing. Insurers may no longer continue to use their old rates after that date. By their very nature, loss costs would not be considered to be an adequate rate for an insurer. An insurer, therefore, should not issue new policies after the effective date of the Reference Filing until the insurer’s LCM has been approved by the

Superintendent. Every insurer that intends to write workers' compensation insurance in this state must make an appropriate rate filing with the Department.

An insurer that is a member or subscriber of the RSO should make a filing for approval using the sample form attached to this Circular Letter (the "Reference Filing Adoption Form"). The insurer's rates will be the product of the approved loss costs and the insurer's approved LCM, which is set forth in the Reference Filing Adoption Form. As part of a Reference Filing, insurers should submit five years of loss experience and Expense data in support of their LCM.

An insurer may file a Loss Cost Modifier to the loss costs in the approved Reference Filing based upon its own anticipated loss experience and loss adjustment expenses. Supporting documentation will be required for upward and downward Loss Cost Modifiers. If an insurer's Loss Cost Modifier is other than 1.00, the insurer should submit five years of premium data together with the five years of loss experience data (on an accident year basis) submitted in support of their LCM filing.

For 2008, an insurer may file its LCMs any time but should file them before August 1, 2008. Rates using LCMs filed after August 1, 2008, may not be approved in time for the insurer to implement them by October 1, 2008, the expected date for 2008 rates to become effective. Insurers are strongly encouraged to file their LCMs as soon as possible and to use the System for Electronic Rates and Form Filing (SERFF) to file their LCMs. The use of SERFF will facilitate the Department's ability to approve the LCM filing in a timely manner. As required by Chapter 11 of the Laws of 2008, the Department will promptly display each insurer's LCM on the Department's website.

The Superintendent will propose a regulation in accordance with Chapter 11, which defines LCM and other relevant terms as used in this Circular Letter, as well as address other pertinent issues.

Any questions or comments regarding the contents of this Circular Letter should be directed to:

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Very truly yours,

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