



**2012 Report on  
Workers' Compensation Insurance**

**September 28, 2012**

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## Executive Summary

- Employers are required to purchase or self-insure for workers' compensation insurance. They may buy workers' compensation insurance from an insurer authorized to write workers' compensation insurance in the State or from the Injured Workers' Insurance Fund ("IWIF"). Subject to regulatory approval, an employer may self-insure.<sup>1</sup>
- Ninety-nine insurance groups offer workers' compensation insurance to Maryland employers. Workers' compensation insurance is the third largest line in property and casualty insurance following auto insurance and homeowners insurance.
- The top eight workers' compensation insurance groups, including IWIF, wrote approximately 69 percent of the market in 2011 (Exhibit 3). IWIF is the largest writer, accounting for about 23.1 percent of the market in 2011. The second largest writer is Hartford Fire and Casualty Group, accounting for about 14.3 percent of the market in 2011.
- The National Council on Compensation Insurance, Inc. ("NCCI") files pure premium loss costs with the MIA on behalf of all insurers who write workers' compensation insurance in the State with the exception of IWIF. No insurer may use the NCCI's pure premium loss costs until those pure premium loss costs are approved by the MIA.
- NCCI filed decreases to the pure premium loss costs for calendar years 2007 through 2009 (ranging from a low of -5.4 percent for 2009 to a high of -1.7 percent for 2008) and increases for calendar years 2010 through 2013 (ranging from a high of 5.7 percent in 2011 to a low of 1.4 percent for 2012). The pure premium loss cost increase for 2012 was primarily due to benefit cost increases of 4.0 percent. For 2013, the increase of 3.8% is due to a combination of experience, trend, benefit and other costs.
- Maryland's workers' compensation insurance market remains competitive.

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<sup>1</sup> In order to be self-insured, approval must be obtained from either the Workers' Compensation Commission or the Maryland Insurance Administration depending on the nature of the employer seeking to self-insure.

## **Introduction**

Pursuant to §2-10A-03 of the State Government Article of the Annotated Code of Maryland, the Maryland Insurance Commissioner issues an Annual Report to the Joint Committee on Workers' Compensation Benefit and Insurance Oversight ("Committee")<sup>2</sup> regarding the condition of workers' compensation benefits and workers' compensation insurance in Maryland, and the effect of Chapters 590 and 591 of the Laws of Maryland of 1987 on those benefits and that insurance.<sup>3</sup>

## **Overview**

Since the early 1900s, every state has required employers to provide some form of protection for their employees who are injured while working. Workers' compensation laws are based on a no-fault system designed to compensate workers who sustain accidental injuries arising out of and in the course of their employment. The forms of compensation may include payment for medical services, rehabilitation services, lost or replacement income, and any permanent partial or permanent total disability the worker may sustain as a result of the work-related injury or occupational disease. When a worker dies as a result of a work-related injury or disease, the benefits also may include funeral expenses and survivor benefits.

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<sup>2</sup> The Workers' Compensation Commission ("WCC") also submits a report to the Committee pursuant to § 2-10A-03.

<sup>3</sup> Among other things, Chapter 590 established competitive rating for workers' compensation insurance under certain circumstances. It also requires workers' compensation insurers to adhere to a uniform classification system and uniform experience rating plan; permits an insurer to develop subclassifications in certain cases; requires workers' compensation insurers to record and report certain workers' compensation experience; requires a rating organization to develop and file certain rules; prohibits insurers from agreeing with other insurers to adhere to certain rules; specifies the contents of an experience rating plan; and permits insurers to file rating plans providing for retrospective premium adjustments. Chapter 591 provides, among other things, that the allowable fees and other charges for medical treatment and services established by the WCC shall be reviewed by the WCC at least once every two years for completeness and reasonableness, and that WCC-adopted guidelines be revised accordingly.

Employers may purchase workers' compensation insurance from an insurer authorized to write workers' compensation insurance in the State or from the Injured Workers' Insurance Fund ("IWIF"). Subject to regulatory approval, an employer may self-insure.

Workers' compensation insurance is a "long-tail" line of business, as claims may be open for long periods of time, benefits may be awarded in stages and in various combinations of disability determinations, and claims may be reopened at a later point in time resulting in the payment of additional benefits. All of these factors can make it difficult to accurately predict costs of workers' compensation claims.

Maryland's Workers' Compensation Commission's Medical Fee Guide is one tool Maryland has used to curtail medical cost increases and make it easier for workers' compensation insurers to predict cost of claims. In an effort to further decrease medical cost trends, some workers' compensation insurers have entered into contracts with Preferred Provider Organizations (PPOs). Providers contracting with a PPO may agree to accept a lower fee than that established by the Workers' Compensation Commission's Fee Guide. If an injured worker receives services from such a provider, the workers' compensation insurer pays the provider in accordance with the PPO contracted rate or the Workers' Compensation Commission's Medical Fee Guide, whichever is less. Furthermore, under the State's all-payer hospital rate setting system, workers' compensation insurers pay the same amount for hospital services as all other payers.

### **2012 Legislative Changes Impacting Workers' Compensation**

In 2012, the following changes were made to the laws governing workers' compensation insurance and IWIF:

**HOUSE BILL 65 (Chapter 11) / SENATE BILL 30 (Chapter 10) - Injured Workers' Insurance Fund - Cancellation of Policies - Failure to Pay a Premium**

- Aligns the Injured Workers' Compensation Fund's (IWIF) cancellation procedures with those of private workers' compensation insurers by authorizing IWIF to cancel policies in accordance with the Insurance Article.
- Authorizes IWIF to pursue collection of the debt of any policyholder whose insurance is cancelled for nonpayment of premium, rather than referring cases for collection to the Attorney General.

*Effective Date: July 1, 2012*

**HOUSE BILL 114 (Chapter 41) / SENATE BILL 174 (Chapter 40) - Subsequent Injury Fund and Uninsured Employers' Fund - Assessments on Settlement Agreements**

- Excludes the amount of medical benefits in a formal set-aside allocation that is part of an approved settlement agreement approved by the Workers' Compensation Commission (WCC) from the assessments required to be imposed by the WCC payable to the Subsequent Injury Fund and the Uninsured Employers' Fund if: (1) the amount of the medical benefits exceeds \$50,000 and the payment of the benefits by the employer or its insurer is made directly to an authorized insurer that provides periodic payments to the covered employee pursuant to a single premium authority; or (2) the amount of medical benefits is in any amount and the payment of medical benefits by the employer or its insurer is to an independent third-party administrator that controls and pays the medical services in accordance with the formal set-aside allocation, provided there is no reversionary interest to the covered employee or the covered employee's beneficiaries.

*Effective Date: July 1, 2012*

**HOUSE BILL 293 (Chapter 119) – Worker's Compensation - Uninsured Employers' Fund**

- Specifies that the director of the Uninsured Employers' Fund (UEF), rather than the UEF board, is the appointing authority for all staff and has immediate supervision and direction over administration of UEF.
- Authorizes the director to employ staff in accordance with the State budget.
- Requires the UEF board to review the administration of the UEF fund by the director.
- Authorizes an employee to appeal to the board a disciplinary action taken by the director.

*Effective Date: October 1, 2012*

**HOUSEBILL 421 (Chapter 663) – Workers' Compensation - Death Benefits - Determination of Benefits**

- Alters the calculation of workers' compensation benefits for a dependent of a deceased covered employee who died due to an occupational disease by calculating the average weekly wage using the date of the last injurious exposure of the covered employee to the hazards of the occupational disease, rather than from the date of disablement from the occupational disease.

*Effective Date: October 1, 2012*

**HOUSE BILL 835 (Chapter 398) - Workers' Compensation - Permanent Partial Disability Benefits - Washington Metropolitan Area Transit Authority**

- Provides that police officers employed by the Washington Metropolitan Area Transit Authority (WMATA), like other police officers, are eligible for enhanced workers' compensation benefits for permanent partial disabilities.
- Requires WMATA to compensate WMATA police officers who are awarded claims of fewer than 75 weeks for permanent partial disabilities at the higher rate (two-thirds of the officer's average weekly wage, not to exceed one-third of the State average weekly wage) that is established for claims of 75 to 250 weeks.

*Effective Date: October 1, 2012*

**HOUSE BILL 1085 (Chapter 507) / SENATE BILL 431 (Chapter 506) – Workers' Compensation - Emergency Responders - Revisions**

- Alters the definition of “on duty” to include the performance of a duty assigned to: (1) a member of a fire company appointed as a deputy sheriff under certain provisions of law; or (2) an individual appointed to serve as a member of the fire police in Washington County under a certain provision of law.
- Expands the definition of “volunteer company” to include a volunteer fire police unit.
- Provides that a member of a volunteer fire company who is a covered employee may not be considered a paid covered employee for receiving, as a membership benefit, a yearly stipend for expenses of up to \$5,200 to off-set out-of-pocket expenses.
- Prohibits the stipend from being used when determining the average weekly wage of an injured volunteer.

*Effective Date: October 1, 2012*



**HOUSE BILL 1101 (Chapter 445) - Workers' Compensation - Medical Presumptions and Study**

- Alters the list of occupational disease presumptions under workers' compensation law for firefighters and related personnel.
- Increases the minimum service requirement for a covered employee to qualify for specified occupational disease presumptions to 10 years.
- Requires the Department of Legislative Services to contract with a medical expert affiliated with an academic research institution or organization to conduct a study of all types of cancers that are likely to be contracted by firefighters and related personnel in the line of duty.

*Effective Date: June 1, 2012*

**HOUSE BILL 1175 (Chapter 420) - Workers' Compensation- Students in Unpaid Work-Based Learning Experiences Ho. Co. 9-12**

- Authorizes the Board of Education in Howard County to waive the requirement that a participating employer reimburse the county for the cost of workers' compensation insurance coverage provided for students placed in unpaid work-based learning experiences.

*Effective Date: July 1, 2012*

**SENATE BILL 745 (Chapter 570) – Injured Workers' Insurance Fund - Conversion to Chesapeake Employers' Insurance Company**

- Converts IWIF from an independent State entity into a statutorily created, private, nonprofit, nonstock workers' compensation insurer to be named the Chesapeake Employers' Insurance Company (Company).
- Requires the Company, before October 1, 2013, to take all steps necessary to become a private, nonprofit, nonstock corporation that is subject to – and has the powers, privileges, and immunities granted by – provisions of law applicable to other insurers authorized to write workers' compensation insurance in the State.
- The Company, beginning October 1, 2013, will maintain IWIF's role as the workers' compensation insurer of last resort in the State.
- Requires the Company to continue to set actuarially sound rates in the same manner in which IWIF sets rates, subject to review by the Commissioner.

- Prohibits the Company from being sold, dissolved, or converted into a mutual or stock company and provides that the Company is not, for any purpose, a department, unit, agency, or instrumentality of the State.
- Provides that all debts, claims, obligations, and liabilities of the Company are not the debts, claims, obligations of the State. Further, money of the Company is not part of the general fund, and the State may not budget for or provide general fund appropriations to the Company.
- Prohibits the Company from cancelling or refusing to renew or issue a policy except for nonpayment of a premium, failure to provide payroll information, or failure to cooperate in a payroll audit.
- Provides that the Company is subject to requirements, currently applicable to IWIF, related to the use of minority business enterprises for specified brokerage and investment management services.
- Requires the Company to submit, to the Governor's Office of Minority Affairs, specified reports that are currently submitted by IWIF.
- Requires IWIF to remain in existence for as long as it continues to have employees; employees of the Company are not employees of the State.
- Prohibits IWIF from hiring new employees on and after October 1, 2013.
- Authorizes employees of IWIF to continue as IWIF employees or elect to be employees of the Company.
- Authorizes employees of IWIF to be assigned to perform functions of the Company under a contract between IWIF and the Company.
- Requires IWIF, before October 1, 2013, to continue to serve as the workers' compensation insurer of last resort for workers' compensation insurance and as a competitive workers' compensation insurer under the same terms and conditions as IWIF serves under current law.
- Prohibits IWIF, on and after October 1, 2013, from issuing new policies or otherwise engaging in the business of insurance, although IWIF may continue to serve as the third-party administrator for the State under a contract with the State.
- Provides that the board for IWIF is the board for the Company.

- Requires the MIA, in consultation with IWIF and the National Council on Compensation Insurance (NCCI), to study whether the Company should be subject to specified ratemaking requirements – including the requirement for NCCI membership – that apply to other workers’ compensation insurers. The MIA must report its findings and recommendations to specified committees of the General Assembly by October 1, 2012.
- Requires the MIA to contract with an independent consulting firm to conduct a study to determine the fair value of any financial contribution made by the State to IWIF and any financial benefit received by IWIF from the State. In conducting the study, the firm must consult with IWIF, the Commissioner, and the Secretary of Budget and Management.
- Requires the study to consider the fair value of funds including start-up funds provided by the State to IWIF at any time, IWIF real estate or other assets, and property, transfer, sales, excise, and premium taxes not paid by IWIF. IWIF is responsible for the cost of the study and the MIA is required to report the firm’s findings and conclusions to IWIF, the Governor, and specified committees of the General Assembly by October 1, 2012.
- Provides that if the study concludes that the fair value of IWIF is \$50 million or more, (1) the MIA must contract with consultants to conduct a comprehensive assessment of the long-term effect of transferring the fair value to the State on the adequacy of IWIF’s surplus; and (2) the Company shall owe a debt to the general fund in an amount equal to the fair value less \$50 million (the amount to be transferred from IWIF to the general fund under the Budget Reconciliation and Financing Act (BRFA) of 2012), less the cost of the study and the assessment.
- Requires the company, depending on the adequacy of its surplus, to pay the debt in installments beginning in fiscal 2014 or over an alternative period of time as agreed by IWIF and the Secretary of Budget and Management.
- Provides that an installment shall be suspended or delayed in any year in which the Company’s risk-based capital ratio is less than 700% of its authorized control level. If this ratio is over the threshold, the MIA may still suspend or delay an installment based on the adequacy of company’s surplus or the company’s ability to meet its financial obligations.
- Provides that IWIF is responsible for paying the costs of retirement and retiree health benefits.

***Effective Date: May 22, 2012***

## Workers' Compensation Insurers

Ninety-nine insurance groups, including IWIF, offer workers' compensation insurance to Maryland employers. Together, these insurers had \$741,343,137 direct written premium in 2011. This represents 8.5% of the direct written premiums written by all property and casualty ("P&C") insurers, making workers' compensation insurance the third largest line in P&C insurance following auto insurance and homeowner's insurance. Exhibit 1 displays the workers' compensation share of total Property and Casualty industry ("Industry") written premium in the State for the period 2002 to 2011.

The top eight workers' compensation insurance groups, including IWIF, wrote approximately 69% of the market in 2011. Table 1 below displays the market share for each of these insurance groups. IWIF is the largest writer of workers' compensation insurance in Maryland, with a market share of 23.1 percent in 2011.

<b>Table 1: Market Share Largest Writers, 2010 and 2011</b>		
<b>Insurance Group</b>	<b>Percentage Market Share, 2010</b>	<b>Percentage Market Share, 2011</b>
IWIF	22.5	23.1
Hartford Fire and Casualty Group	12.5	14.3
Travelers Group	7.6	8.1
Liberty Mutual Group	9.6	7.6
Erie Insurance Group	4.7	5.4
Zurich Insurance Group	4.8	3.8
Old Republic	3.4	3.3
Selective	3.0	3.1

Exhibits 2 through 6 provide additional related data as follows:

- Exhibit 2 displays a comparison of the top eight workers' compensation insurance groups' market shares as referenced in Table 1. This exhibit shows market shares

for these top eight workers' compensation writers for a ten-year period from 2002 through 2011.

- Exhibit 3 displays a complete listing of the market shares for all Maryland workers' compensation insurer groups operating in Maryland. This information represents 2011 written premiums.
- Exhibit 4 displays the individual insurers associated with each workers' compensation insurer group.
- Exhibit 4a lists Maryland Excess Workers' Compensation Insurers. This coverage is designed for employers that self-insure up to a certain point, and then purchase additional coverage for risk beyond that point.
- Exhibit 5, page 1, compares IWIF's written premium to the Industry for the period 2002 through 2011.
- Exhibit 5, Page 2 illustrates that IWIF remains the largest workers' compensation insurer in Maryland. IWIF lost market share to other workers' compensation insurance groups in the insurance industry from 2005 through 2010, but reversed that trend in 2011.
- Exhibit 6 lists new entrants and re-entrants into the market for 2011. New entrants are companies with no written premium in 2009 and 2010. Re-entrants are those carriers that had premium in 2009, but no premium in 2010.

### **Premium Rates**

Insurance premium rates can be regulated either through prior approval or through competitive rating (also known as "file and use"). Under prior approval, insurers must

file their proposed rates with the MIA and may only begin to use those rates to determine the premium for a particular risk after the MIA has approved them. Under competitive rating, insurers file their proposed rates with the MIA and may begin to use those rates to determine the premium for a particular risk as soon as the MIA has received the filing.

In Maryland, workers' compensation insurance is a blend of prior approval and competitive rating. In this line, all insurers, with the exception of IWIF, are required to subscribe to the NCCI. NCCI is a licensed rating and advisory organization which files pure premium loss costs with the MIA. Pure premium loss costs reflect actual claim information submitted by insurers to the NCCI. Claim information includes lost wages and medical costs. The NCCI then aggregates this claim information for use in its pure premium loss cost filings. Pure premium loss costs do not, however, include any other costs associated with writing workers' compensation insurance, such as profit, commissions, taxes and the expenses associated with providing the benefits to the injured worker (known as loss adjustment expenses). No insurer may use NCCI's pure premium loss costs until those costs have been approved by the MIA. The rates usually are effective beginning January 1 of each year.

Once the MIA has approved the NCCI's pure premium loss costs, insurers submit independent rate filings. These filings adopt the NCCI pure premium loss costs and then include the insurer's expense multiplier. The expense multiplier consists of the following elements from an insurer's expense and profit information: (1) commission; (2) general expense; (3) taxes, licenses and fees; and (4) profit. In addition, since the NCCI does not include loss adjustment expense in its pure premium loss cost filings, companies modify their expense multiplier to include a component for loss adjustment expense. The

insurer's rates are derived by multiplying NCCI's pure premium loss costs by the insurer's calculated expense multiplier. These rate filings are made under competitive rating, which means that insurers may begin to charge premiums based on the specific expense multiplier as soon as it has been filed with the MIA.

IWIF is not required to join NCCI or adhere to the policy forms filed by NCCI. However, IWIF's ratemaking practices are reviewed by the MIA at least once every five years through the financial examination process.

A common measure to determine how much of the premium dollar is used to cover benefits is the loss ratio. A loss ratio of 70 percent, for example, means the insurer spent 70 cents of each dollar collected through direct written premium on benefits. As a group, workers' compensation insurers had a collective loss ratio of 83.7 percent. IWIF's loss ratio was 95.9 percent in 2010, and 90.4% in 2011. From the period of 2002 to 2011, IWIF's loss ratios generally have been higher than the rest of the Industry. (See Exhibit 7 for a comparison of IWIF's loss ratios to those of the Industry for the period 2002 to 2011).

Exhibits 8 through 12 illustrate various aspects of the history of NCCI pure premium loss costs filings in the state of Maryland as follows:

- Exhibit 8 shows NCCI's Maryland statewide pure premium loss costs changes from 1998 through 2013 (the years represent the effective dates of each pure premium loss costs filing).
- Exhibit 9 displays Maryland's history of changes in pure premium loss costs by each industry group.
- Exhibit 10 displays, based on statewide payroll for the listed classifications,

changes in the pure premium loss costs for businesses within each classification listed.

- Exhibit 11 displays the history of the component changes within each NCCI pure premium loss costs filing. This information is not available prior to 2004.
- Exhibit 12, Page 1 represents the cumulative impact of all NCCI statewide pure premium loss costs filings since 1988. Exhibit 12, Page 2 shows this cumulative impact on an industry group basis.

The NCCI filed its pure premium loss costs for Maryland with the MIA on August 2, 2012. The filing was approved by the MIA with an effective date of January 1, 2013. The overall approved change for this filing is an increase of 3.8 percent. This reflects a change of 1.1

percent due to experience, a 0.9 percent change in each of the following: medical and indemnity trends; the cost of benefits; and the employers liability offset. The increase in benefits payable is a result of the estimated impact of increases in the medical and hospital fee schedules. One change this year is that NCCI is no longer estimating the State average weekly wage (“SAWW”), which impacts the indemnity payments made. Instead, NCCI will include the actual changes to the SAWW in future filings.

An increase in pure premium loss costs does not mean all employers will see a premium increase. The premium an employer is charged depends on the employer’s classification and other factors. Some employers may receive premium decreases while others may see premium increases.

### **Terrorism Risk Insurance Program**

In 2002, Congress enacted the Terrorism Risk Insurance Program (“TRIP”),



creating a federal reinsurance program to assist insurance companies in paying for claims relating to acts of terrorism. The program was intended to be a temporary measure to allow time for insurers to develop solutions and products to insure against acts of terrorism. The Act was set to expire in 2005, but was extended until 2007. In December of 2007, it was extended for another seven years until December 31, 2014.

### **Conclusion**

Ninety-nine insurance groups reported workers' compensation insurance premium earned in Maryland. This line of insurance remains competitive and with four years (2010-2013) of modest increases in NCCI "pure premium loss costs", the overall cost for workers compensation insurance for many employers remains stable.