Written Testimony of the

American Property Casualty Insurance Association

Senate Labor Committee Public Hearing

On the

Current State of Workers Compensation

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The American Property Casualty Insurance Association (APCIA) is a national trade association representing over 60 percent of the U.S. property casualty insurance market. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. APCIA appreciates the opportunity to provide written testimony on the current state of workers compensation in New York.

APCIA supports a healthy and competitive workers compensation insurance market which provides reasonable and necessary benefits and treatment for injured workers in a manner which speeds recovery and return to work and contains costs for employers. While workers compensation costs have been decreasing in recent years[1], efforts must continue to contain costs and ensure a modern and well-functioning system which facilitates the prompt and fair processing claims. This will ensure that injured workers receive the treatment and compensation which they deserve efficiently and without delay.

Since the 2007 reform legislation made a number of substantial changes to the workers compensation system in New York, the legislature has passed a number of bills to make additional reforms intended to both increase benefits and protections for workers while also lowering costs for employers. It is important that both goals be considered when contemplating legislative changes in the workers compensation area. Most recently, legislation was enacted last year which took effect on January 1, 2024 to increase the minimum weekly indemnity benefit.

The New York State Workers Compensation Board has made a number of improvements in recent years to modernize their systems, improve efficiency, and contain costs. As a result, the workers compensation assessment rate decreased by six percent in 2024. Through the Board's OnBoard modernization program, the Board is making the transition from a paper-based system to an online system, making it easier for stakeholders to interact with each other and the Board and increasing efficiency in getting benefits to injured workers. The Board has also made strides toward improving medical treatment by updating and expanding medical treatment guidelines which ensure a consistent standard of high-quality care for injured workers. These evidence-based standards ensure that workers get the most appropriate treatment for their injuries so as to speed recovery and return to work.

While the workers' compensation system is currently healthy, one component to monitor is the level of indemnity losses. Unlike the rest of the country, indemnity losses in New York are a much greater proportion of system losses. Indemnity losses constitute 68% of New York's total system losses, as opposed to 32% due to medical losses. This is in sharp contrast to the rest of the country, where indemnity losses are slightly lower than 50% of total losses and medical expenses represent slightly greater than 50% of total system losses.

[1] In July of 2023, the New York State Department of Financial Services approved a loss cost decrease of 2.6%.

The need to monitor indemnity losses is particularly critical based on the rapid spike in indemnity payment in the 2020-2021 period. After years of relative stability between 2015 through 2019, indemnity benefits per claim increased by 10% in the 2020-2021 period. Workers' Compensation Research Institute, "Monitoring Trends in the New York Workers' Compensation System" (2022 edition) p.41. Similarly, indemnity severity increased 11.3% over accident years 2017-2022. NYCIRB, "State of the System 2023" p.20.

Looking forward, APCIA would urge consideration of measures to allow insurers to more accurately tailor premiums for workers compensation to the risk posed by an employer. In 2022, less than 10% of New York workers' compensation policies were schedule rated. The majority of schedule rated policies provided employers a credit rather than a debit. The average adjustment for all schedule rated polices, with either a credit or debit, was a credit of 2.6%. One way to encourage pricing flexibility to help employers would be to increase the percentage of allowable premium credits and debits under the state's schedule rating program. New York currently limits the total amount of such credits or debits to five percent, while most other states allow up to 20% or 25%. Schedule rating is a tool that ensures accurate pricing and promotes workplace safety. Under schedule rating, a base premium is set that works with a schedule of premium credits or debits. Under the schedule, an employer that has taken positive steps to implement proven workplace safety programs and protocols (such as installing workplace safety devices and equipment or conducting preventative maintenance), may receive a premium credit. Conversely, an employer that permits safety hazards (fails to change light bulbs in stairwells, does not maintain a clean warehouse floor), may receive a debit.

Schedule rating rewards behavior that reduces injuries and losses, leading to lower premiums for workers compensation insurance. New York has recognized the value of schedule rating by initially allowing it in 2015, however, the five percent cap is too low to allow the full potential value of schedule rating to be realized and APCIA would urge that the cap be increased to 20%. It should be noted that a change in the law is not necessary in order to increase the schedule rating cap.

Another measure which would allow insurers to more accurately tailor premium to risk would be allowing workers compensation insurers to have more than one rating plan in a single company. Currently, workers compensation insurers are only permitted to have one rating plan per company which severely restricts the ability of insurers to reward good risks with a better rate or increase premiums for higher risks. Like schedule rating, allowing insurers this flexibility will encourage employers to take steps to improve workplace safety. In 2022, legislation was passed[2] to add commercial lines policies (policies subject to Section 3426 of the Insurance Law) to the policies for which multiple rating plans within a single company are permissible if approved by the Department of Financial Services. Unfortunately, however, workers compensation policies are exempt from Section 3426 of the insurance law so additional legislation will be necessary to allow multiple rating plans for workers compensation insurance.

[2] Chapter 194 of the laws of 2022

Both of these suggested changes would encourage workplace safety and reduce premiums for employers who make efforts to ensure a safer workplace. These changes would bring benefits both for employers and injured workers and APCIA would urge support for these measures.

Thank you for your consideration of these comments. APCIA looks forward to working with the Senate Labor Committee on measures to promote a healthy and competitive workers compensation market which ensures reasonable benefits and high-quality treatment for injured workers while also ensuring the affordability of workers compensation insurance.