

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-5

PROPERTY AND CASUALTY

Amended Regulation 5-1-11

RISK MODIFICATION PLANS

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Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to provide criteria for the modification of commercial property and casualty manual rates and to establish workers' compensation disclosure requirements.

Section 3 Applicability

This regulation applies to all insurers writing commercial property and casualty insurance policies, including workers' compensation insurers, licensed to conduct business in this state and Pinnacol Assurance.

Section 4 Definitions

- A. "Anniversary date" means the annual anniversary of the date of issue of a policy as shown in the policy declaration.
- B. "Certified workers' compensation risk management program" means a program which meets the minimum standards outlined in Colorado Insurance Regulation 5-3-1 and is certified with a Cost Containment Certificate by the Colorado Cost Containment Board.
- C. "Designated medical provider" means any physician, hospital, clinic or physician of a preferred provider organization network who meets all of the qualifications of a designated medical provider outlined in Regulation 5-3-1, which defines minimum risk management standards for cost containment certification.
- D. "Experience rating plan" means any rating plan or system wherein a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

- E. "Improved workers' compensation loss experience for experience or schedule rated insured business entities" means lower frequency and severity of losses for the last policy period as compared with frequency and severity of losses within the immediate prior policy period. If loss experience is not available for the complete last policy year, losses must be compared for equal periods of time (eight months vs. eight months, ten months vs. ten months, etc.). Whether the risk management program certification credit applies and whether the business entity's loss experience has improved shall be determined by the insurer prior to granting the cost containment credit. The Colorado Cost Containment Board reviews the business entity's loss record for the purpose of certification of the risk management program only.
- F. "Initial certification date" means the date the risk management program of a business entity is initially certified by the Colorado Cost Containment Board. A risk management program that meets the risk management standards of Colorado Insurance Regulation 5-3-1 shall be initially certified one year after the implementation of the program by the business entity.
- G. "Initial effective date of the premium dividend resulting from the implementation of a risk management program" means the annual anniversary date of a workers' compensation policy immediately after the risk management program has been certified by the Colorado Cost Containment Board. If the annual anniversary date is within thirty (30) days of the date a risk has been certified, a grace period for the application of a premium dividend is allowed. However, a grace period, when allowed, must be applied consistently.
- H. "Manual rate" means a rate designed to apply on a generic basis to similar risks within the same class, filed by an insurer or rating/advisory organization with the Division of Insurance and made part of the rating manual used by an insurer or rating/advisory organization.
- I. "Payroll" means the remuneration paid or payable by the business entity for services of employees. Remuneration is money or substitutes for money including commissions, bonuses, extra pay for overtime, pay for vacations, holidays and sickness, statutory insurance or pension plans, payments for piece work, allowances for tools, the rental value of an apartment, and the value of lodging and meals.
- J. "Premium Differential" means an adjustment to the workers' compensation premium when the insured business entity has selected a designated medical provider.
- K. "Premium dividend resulting from the implementation of a risk management program" means the credits allowed for business entities which implement a risk management program and comply with the standards established by Colorado Insurance Regulation 5-3-1 and the business entity's loss experience under the risk management program indicates that such premium dividend is warranted.
- L. "Premium dividend resulting from rehiring previously injured employees" means the credit arrived at for employers who rehire previously injured employees who sustained permanent partial disabilities.
- M. "Rate modification plan" (commonly called Schedule Rating Plan or Individual Risk Premium Modification Plan) means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for these characteristics or conditions to the manual rate of a particular insurance risk. The effect of the modification factor is to increase (debit) or decrease (credit) the manual rate. Rate modification plans exclude merit rating plans and retrospective rating plans.
- N. "Rehired employee with permanent partial disabilities" means an employee who sustained permanent partial disabilities and is reemployed by the same employer, not a successor, at the

pre-injury wages including any wage increases to which such employee would have been entitled had the employee not been injured.

- O. "Renewal date of premium dividend" means each annual anniversary date of a workers' compensation insurance policy after the initial effective date of the premium dividend.

Section 5 Rules

A. Rate Modification Plans

Rate modification plans, justified according to the standards herein, are permitted. However, the commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective and is unfairly discriminatory. Therefore, the use of unjustified rate modification plans in rating of commercial property and casualty insurance risks located in Colorado is prohibited.

The following elements shall be considered in determining whether or not a rate modification plan, or its use, is justified:

1. Rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage.
2. Rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used.
3. If a risk is experience rated, the amount of the credit or debit derived from using a rate modification plan (Schedule Rating Plan) shall be applied to an experience rated risk in a multiplicative manner, after application of the experience modification, and before the application of the cost containment dividend, premium discounts and expense constants.
4. Individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must exist in the underwriting file or credible electronic record to enable the commissioner to verify compliance with this regulation. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk. For the purpose of workers' compensation insurance, documentation must include a copy of the employer's Colorado Cost Containment Certificate if a premium dividend is allowed. Misclassification of a risk will be considered a modification without justification.
5. Any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages.
6. Once an insurer has filed a rate modification plan, its use is mandatory. Insurers may use judgment in selecting the amount of credit or debit stated within a range of credits or debits. However, such credits or debits must be applied uniformly in a nondiscriminatory manner for all eligible classes of risks eligible under a rate modification plan, even if the application of the plan results in a zero modification, or no change in a previous modification applied.
7. The application of any rate modification plan shall not result in debits or credits that exceed 25%. The rate modification plan must state specifically the 25% maximum limitation. Modifications generated by experience (experience rating) or company expense experience (company deviation plans) are not subject to the 25% limitation.

Company deviation plans may be applied in addition to experience modifications, rate modifications and premium discounts.

8. Once a rate modification plan has been applied to a risk and a credit or debit established, no change in the established credit or debit can be made without appropriate justification and documentation. If such justification and documentation becomes available during the policy period, the established credit or debit cannot be changed until the next anniversary date of the insurance policy.
9. A rate modification plan shall not apply to minimum premium policies.
10. Any rate modification plan must provide that when a risk is rated below average (debited), an insured or applicant, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that the insured or applicant will be fairly apprised of any corrective action that might be appropriate with respect to the insurance risk.

B. Experience Rating Plans

Experience rating plans shall be calculated from at least three complete years of premium or payroll and loss data, except if a lesser time period has been approved by the Commissioner. Experience rating plans cannot be calculated with estimated premiums or payroll. Premium or payroll and loss figures used in the calculation must be verifiable and justifiable.

C. Workers' Compensation Cost Containment Certification and Selection of Designated Medical Provider disclosure

All workers' compensation insurers, including Pinnacol Assurance, shall disclose the availability of cost containment certification by the Colorado Workers' Compensation Cost Containment Board and the potential premium savings on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy. Such disclosure applies regardless of whether or not a risk is experience or schedule rated. Insurers shall require that the insured business entity indicate on a form developed by the insurer, that the business entity is aware of the possible premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board. This form shall be made part of the insured business entity's underwriting file.

On an annual basis, all workers' compensation insurers, including Pinnacol Assurance, shall disclose the premium differential on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy when the policyholder has selected a designated medical provider. Such disclosure applies regardless of whether a risk is schedule rated. Insurers shall require that the insured business entity indicate, on a form developed by the insurer, that the business entity is aware of the premium differential for selecting a designated medical provider. This form shall be made part of the insured business entity's underwriting file.

D. Premium Dividend for Certified Risk Management Programs

Insured Business Entities Qualifying for Experience and/or Schedule Rating: If an insured business entity qualifies for experience and/or schedule rating under its workers' compensation insurance and the insured business entity has implemented a certified workers' compensation risk management program, the insurer must allow a 5% premium dividend if the loss experience has improved since the last renewal date of workers' compensation insurance. The premium dividend shall be in addition to the maximum schedule rating deviation of 25%. The schedule rating and cost containment discounts shall be applied multiplicatively. Therefore, the maximum

schedule rating credit (0.75) multiplied by the cost containment certification premium dividend (0.95) cannot exceed 28.75%.

Insured Business Entities Not Qualifying for Experience and/or Schedule Rating: If an insured business entity does not qualify for experience and/or schedule rating under its workers' compensation insurance and the insured business entity has implemented a certified workers' compensation risk management program, the insurer must allow the following premium dividend:

Premium Dividend	Dividend Criteria
10%	If the insured business entity has been loss free for at least the last year immediately preceding the effective date of the premium dividend.
8%	If the insured business entity had one medical loss exceeding \$250 in the last year immediately preceding the effective date of the premium dividend.
6%	If the insured business entity had two medical losses, each exceeding \$250, in the last year immediately preceding the effective date of the premium dividend.
4%	If the insured business entity had three medical losses, each exceeding \$250, in the last year immediately preceding the effective date of the premium dividend.
2%	If the insured business entity had three medical losses, each exceeding \$250, and one claim for loss of time in the last year immediately preceding the effective date of the premium dividend.
0%	If the insured business entity had more than three medical losses and one claim for loss of time in the last year immediately preceding the effective date of the premium dividend.

The application of the premium dividend up to 10% shall be dependent on available loss statistics on the initial and the renewal date of premium dividends. However, if loss statistics are not available at the initial or renewal date of the premium dividend, such loss statistics shall be applied on the subsequent renewal date. If an insured business entity changes insurers, the replaced insurer must furnish such loss statistics to the business entity prior to the effective date of the new policy.

Individual underwriting files must contain a copy or electronic record of the insured business entity's Colorado Cost Containment Certificate and historical and current loss statistics, or credible evidence available from the Colorado Division of Workers' Compensation that such entity qualifies and has received cost containment certification.

Any other rating plan which incorporates the characteristics of the plan for "premium dividend" as defined in this regulation, may be substituted for the plan for premium dividend. However, under no circumstance, can such a substitute rating plan allow for credits already reflected in the rates.

E. Premium Differential for Selection of Designated Medical Provider

All workers' compensation insurers, including Pinnacol Assurance, must allow a credit of 2.5% as a premium differential of the workers' compensation insurance premium if the insured business

entity has selected a designated medical provider. If an insured business entity is eligible for schedule rating, the 2.5% credit must be included in the total schedule credit or debit, subject to the 25% maximum limitation.

Whenever the insurer allows the premium differential in the schedule rating for an insured business entity which selects the designated medical provider, the insurer must report the premium differential, separately, to the rating/advisory organization to capture this information.

If an insured business entity is not eligible for experience or schedule rating, the 2.5% credit shall be applied in addition to the premium dividend applicable. The combined premium dividend and the 2.5% credit for selection of a designated medical provider shall not exceed 12.5%.

F. Workers' Compensation Premium Dividend for Employing Previously Injured Employees with Permanent Partial Disabilities

The workers' compensation premium dividend applies to all workers' compensation policies with large or small premiums, except policies subject to minimum premiums. The dividend shall be calculated annually after a policy has expired and shall apply to the premium developed from the payroll of the rehired injured employees who sustained permanent partial disabilities (payroll of rehired employees x manual rates x ratio of rehired employees with permanent partial disabilities to injured employees with permanent partial disabilities). This premium shall be subject to all risk modification credits or debits otherwise applicable under the policy. If any employee is rehired during a policy period or was not rehired for the total policy term, the rehired employee shall be considered as being rehired for the total annual policy period or term. The workers' compensation premium dividend applies to all policies which expire on or after March 1, 1993 and all renewal policies thereafter as long as an injured employee who sustained permanent partial disabilities remains with the same employer. In calculating the premium dividend, insurers shall use the following formula:

$$(R / I) (P) = D$$

If (R / I) is greater than 10%, $(R / I) = 10\%$

Assumptions:

R = The number of injured employees with permanent partial disabilities who were rehired during a given policy period.

I = The number of injured employees who sustained permanent partial disabilities during the same given policy period.

P = The actual payroll of reemployed injured employees who sustained permanent partial disabilities multiplied by the manual rate for the classification of the reemployed injured employees. If employees fall into different manual rate classifications, payroll of each employee should be multiplied by the appropriate manual rate. The sum of these would equal P.

D = Amount of premium dividend subject to a maximum of 10% annually.

The premium dividend shall be adjusted annually based on the number of injured employees who sustained permanent partial disabilities rehired within the given policy period.

G. Reporting of Pertinent Information

Upon the request of the commissioner, an insurer to which this regulation applies, shall submit data to the commissioner establishing the relationship of the aggregate premiums actually charged policyholders by the insurer for each line of commercial insurance to the aggregate premium that would have been produced by the insurer's filed unmodified rates for that line of commercial insurance. A rating/advisory organization may file the data on behalf of the insurer.

H. Rate Compliance Examinations

To determine compliance with this regulation the commissioner may order a compliance examination be made of any insurer to which this regulation applies.

I. Filing of Rate Modification Plans

Each insurer to which this regulation applies, shall file its rate modification plan (Schedule Rating Plan), its plan for premium dividend or its substitute plan, and the premium differential for the selection of a designated medical provider prior to implementation with the Division of Insurance.

Section 6 Severability

If any provisions of this regulation or its application to any person or circumstances are for any reason held to be invalid, the remainder of the regulation shall not be affected in any way.

Section 7 Enforcement

Noncompliance with this Regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist orders, and/or suspensions or revocation of insurance licenses.

Section 8 Effective Date

This amended regulation is effective on June 1, 2012.

Section 9 History

New regulation 88-3, effective 1988
Amended regulation 91-4, effective May 1, 1991.
Re-codified as regulation 5-1-11, effective January 1, 1992.
Amended as regulation 5-1-11, effective March 1, 1993.
Amended as regulation 5-1-11, effective April 1, 1997.
Amended as regulation 5-1-11, effective May 1, 2003.
Amended regulation effective June 1, 2012.