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## Bulletin 466

### Impact of Federal Grants on Workers' Compensation Premium

The purpose of this bulletin is to provide guidance to workers' compensation insurers regarding the calculation of premium for certain employers that have benefited from a temporary government aid program offered by Maine's Department of Health and Human Services. That program, the Workforce Retention and Recruitment Initiative (WRI), allowed employers in Home and Community Based Services (HCBS) programs to make one-time payments to employees. The initiative was paid for by special Medicaid funds authorized by the federal American Rescue Plan Act. DHHS encouraged employers to pay these government-funded bonuses to recognize the work of their employees during the pandemic and to recruit new staff. Those payments should not be included in the base for calculating an employer's workers' compensation premium.

Insurers charge premium that is based on an employer's total payroll. Under the generally applicable rules, a bonus would add to the employer's total payroll and therefore increase the workers' compensation premium. Those rules do not distinguish between ordinary bonuses that are funded by an employer and one-time bonuses paid through the employer but funded by a specific government program.<sup>1</sup> For that reason, in the absence of an applicable exclusion, bonuses paid under the WRI program would increase premiums even though the employers merely passed on funds that were given to them for a specific purpose. Furthermore, failure to adjust prior year payroll to disregard these bonuses would also increase the following year's estimated premium charge.

Therefore, the Bureau has directed the State's designated workers' compensation advisory organization, NCCI, to create a "state special" rule to exclude from payroll any payments paid to eligible employees through the WRI program. Employers will need to track WRI bonuses separately from normal payroll so that the bonuses may be excluded from their workers' compensation premium determination. Carriers shall make premium adjustments as follows, as soon as practicable:

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<sup>1</sup> Maine's Workers' Compensation Rating Act requires every workers' compensation insurer to adhere to manual rules that have been developed by the State's designated advisory organization. 24-A M.R.S. § 2382-B(3).



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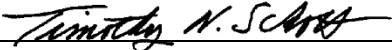
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- **New and renewal policies:** Any prior-year WRRR bonuses shall be disregarded when calculating estimated premium for the new policy year.
- **In-force policies:** If the estimated premium for the current year reflects WRRR bonuses, it shall be recalculated to remove their impact, and the appropriate adjustment shall be refunded to the employer or deducted from the next premium installment.
- **Premium audits:** Any WRRR bonuses paid during the policy year shall be excluded from payroll when calculating the final premium.
- **Policies with completed audits:** If WRRR bonuses were included in payroll, the audit shall be reopened, the premium shall be recalculated to exclude the bonuses, and the employer shall be given the appropriate refund.

This change will prevent employers from being penalized for facilitating the payment of government funds to workers in MaineCare-funded HCBS programs. Also, by excluding these bonuses, employers' payroll will more accurately reflect the compensation ordinarily paid by the employer. Although this change will not impact the method of calculating an employee's average weekly wage under the Maine Workers' Compensation Act,<sup>2</sup> which includes WRRR bonuses, the limited and transient nature of those bonuses makes them unlikely to have a material impact on benefit payments.

May 10, 2023

  
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Timothy N. Schott  
Acting Superintendent of Insurance

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

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<sup>2</sup> 39-A M.R.S. § 102(1), (4).