

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

031 BUREAU OF INSURANCE

Chapter 440: MAINE WORKERS' COMPENSATION RESIDUAL MECHANISM

SUMMARY: This Chapter establishes rules governing the operation of the Maine workers' compensation residual market.

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SUBCHAPTER 1: GENERAL PROVISIONS

- Sec. 1 Purpose. The purpose of this chapter is to establish clear and comprehensive rules governing the operation of the workers' compensation insurance residual market.
- Sec. 2 Authority. This chapter is adopted pursuant to the authority granted by 24-A M.R.S.A. §§212 and 2386(5), and P.L. 1995, ch. 289, §19(2).
- Sec. 3 Coverages. The following coverages and such other coverages as the Board of Governors may from time to time authorize, subject to the approval of the Superintendent, shall be available through the residual market:
- A. Statutory Workers' Compensation (part one) - Coverage under the Maine Workers' Compensation Act and Occupational Disease Law is available.
 - B. Employers' Liability (part two). Part two is restricted to the standard limit of liability as provided by basic manual rule unless the insured requests higher limits of liability in which event the maximum policy limits available shall be at least \$1,000,000/\$1,000,000/\$1,000,000. This coverage is available only as an adjunct to State compensation act coverage.
 - C. Other States' Insurance (part three). Coverage is available as provided by basic manual rule for all states as indicated on the policy.
 - D. Maritime (Admiralty) and Federal Employers' Liability Act. Liability under Maritime (Admiralty) or Federal Employers' Liability Act, Programs I and II (standard limits shall be as prescribed in the State by Basic Manual Rule), written as an adjunct to the Maine Workers' Compensation and Occupational Disease Act coverage is permitted.
 - E. Voluntary Compensation Endorsement. This endorsement is not available except to fulfill the requirements of Program II of Maritime and/or Federal Employers' Liability Act.
 - F. United States Longshoremen's- and Harbor Workers' Act. Coverage of liability under the United States Longshoremen's and Harbor Workers' Compensation Act written as an adjunct to Maine Workers' Compensation Act and Occupational Disease Law coverage is available.
 - G. Outer Continental Shelf Lands Act. Coverage of liability under the Outer Continental Shelf Lands Act written as an adjunct to Maine Workers' Compensation Act and Occupational Disease Law coverage is available.

- H. Defense Base Compensation Act. Coverage of liability under the Defense Base Compensation Act written as an adjunct to Maine Workers' Compensation Act and Occupational Disease Law coverage is available.
- I. Non-Appropriated Fund Instrumentalities Act. Coverage of liability under the Non-Appropriated Fund Instrumentalities Act written as an adjunct to the Maine Workers' Compensation Act and Occupational Disease Law coverage is available.
- J. Transportation, Wages, Maintenance and Cure. Transportation, wages, maintenance and cure, if required of the insured by contract, are permitted.
- K. Waiver of Subrogation . This endorsement is permitted if required of the insured by contract.
- L. Special Endorsements. The coverages outlined above as they apply to special endorsements (e.g., the alternate employer endorsement) which may be used if required of the insured by contract and permitted by the State, are permitted.

Sec. 4 Other Applicable Rules. The operation of the residual market shall be subject to the following provisions in addition to applicable statutes and the rules contained in this chapter.

- A. Chapter 450. Insurance Bureau Rules Chapter 450, Workers' Compensation Insurance Experience Rating.
- B. Chapter 460. Insurance Bureau Rules Chapter 460, Workers' Compensation Statistical Recording and Reporting.
- C. Chapter 470. Insurance Bureau Rules Chapter 470, Workers' Compensation Insurance Premium Audits.
- D. Other Provisions. All applicable workers' compensation insurance manual rules, uniform plans, forms, and rates and rating rules approved by the Superintendent pursuant to 24-A M.R.S.A., Chapter 25.

Sec. 5 Definitions. For purposes of this chapter, the following terms are defined as stated.

- A. "Board" means the Board of Governors of the Maine Workers' Compensation Residual Market Pool.
- B. "Bureau" means the Maine Bureau of Insurance.

- C. "Manager" means the manager appointed by the Board to perform the functions specified in this chapter concerning the operation of the residual market.
- D. "Plan" means the plan of operation for the residual market ~~its~~ as set forth in this chapter.
- E. "Pool" means the Maine Workers' Compensation Residual Market Pool.
- F. "Superintendent" means the Maine Superintendent of Insurance.

SUBCHAPTER II: MAINE WORKERS' COMPENSATION RESIDUAL MARKET POOL

- Sec. 1 Pool Established. There is hereby established as part of the residual market mechanism the Maine Workers' Compensation Residual Market Pool, an unincorporated association.
- Sec. 2 Purpose. The purpose of the Pool is to provide reinsurance for all workers' compensation residual market policies. Every residual market policy issued to an employer by a member is reinsured effective at 12:01 a.m. on the date on which the policy becomes effective, and the reinsurance applies during the period that the policy is in effect. The reinsurance provided by the Pool shall apply only to workers' compensation policies, including those coverages set forth in Subchapter 1, Section 3 of this Rule.
- Sec. 3 Membership. The Pool consists of all Insurers, as defined in the Workers' Compensation Residual Market Deficit Resolution and Recovery Act, 24-A M.R.S.A. §2392(11), that were authorized to provide workers' compensation insurance in Maine at any time between January 1, 1988 and December 31, 1992. By virtue of that authority, all Pool members remain bound by the plan of operation of the workers' compensation residual market mechanism for the duration of the Pool's existence. Each group of affiliated companies that is considered a single "Insurer" for purposes of the Deficit Resolution and Recovery Act is considered a single member of the Pool and is entitled to a single vote in membership meetings on any matter on which that member is eligible to vote.
- Sec. 4 *Repealed as of November 27, 1995.*
- Sec. 5 Termination of Membership by Insolvency.
 - A. Pool obligations. In the event any member company shall be adjudicated insolvent, membership of such company in the Pool shall be deemed terminated at the time of such adjudication of insolvency.

The Pool shall have the option, after the insolvency, to:

- (1) pay to the trustee, receiver, liquidator, rehabilitator or other appropriate representative, all sums for which such insolvent company shall have become liable upon risks to which are reinsured by the Pool, less all sums which are the obligation of the insolvent company as a former member of the Pool. including, but not limited to, an appropriate percentage of all assessments against the insolvent member and all unearned premium distributions, and also less all unearned premium, outstanding ceded premium and unearned servicing carrier allowances retained by the insolvent company; or
 - (2) terminate the obligation of the Pool to such insolvent company to pay through such insolvent company or its representative losses and expenses for which the insolvent company shall have become liable upon risks to which these Rules apply. If this option is exercised, the Board shall make arrangements with the ~~plan manager~~ Plan Manager pursuant to which all risks which have been assigned to and are being serviced by such insolvent member shall be reassigned for servicing. In lieu of being paid through the insolvent company or its representative, such payments shall be made through the member or members assigned to service the risks of the insolvent company; the Board shall have authority to make proper provision, and upon such terms as it shall deem appropriate, for payment of the expenses of servicing of such reassigned risks. Payment -made on account of such risks, including expenses for the servicing thereof, shall be apportioned ratably among the remaining members of the Pool in accordance with the method provided for the apportioning of assessments.
- B. Obligations to Pool. The outstanding liability to the Pool of any insolvent member, except for the portion unexpended of any amount of premium retained for servicing by such insolvent member (if a servicing member) shall, in event of such insolvency, be assumed 'by and apportioned among the remaining members of the Pool in the same manner in which liability for assessments is apportioned; and the participation of such insolvent member in the Pool or the funds thereof except as to any refund (if the right to such refund shall have then accrued), shall terminate. No refund shall be made to such insolvent company until all of its liabilities to the Pool and all obligations assumed by the Pool by Virtue of the provisions in this section shall have been fully settled and satisfied. The Pool shall have all the rights allowed to it by law on behalf of the remaining Pool members against the estate of or funds of the insolvent carrier.

- C. Restriction on Board participation. No member of the Board representing an insolvent company or any company under the same management or part of the same group, affiliation or common ownership, ~~way~~ may vote in any matter related to the insolvency.
- D. Liability limited. Nothing in this Section relating to the insolvency of a member company shall increase the liability of the Pool to an amount greater than the liability had the insolvency not occurred, without the express approval of the Board.

Sec. 6 Meetings and Voting Rights of Members.

- A. Regular meetings. The Pool shall meet annually during the month of June at such place as the Board may determine, subject to the Superintendent's approval. If the annual meeting for any year shall not be duly held, the Board shall cause a special meeting of the membership to be held as soon thereafter as possible, in lieu of and for the purpose of such annual meeting, and all proceedings of such special meetings shall have the same force as if taken at the regular annual meeting.
- B. Special meetings. Special meetings of the members may be called at any time by the Chairman or the Superintendent and special meetings shall be called by the Chairman upon the written request of three members of the Pool.
- C. Notice of meetings. Except as otherwise provided by this rule, notice of all annual and special meetings shall be given or caused to be given by the Chairman, in writing, mailed or delivered to or by telegram directed to each member at the latest address appearing upon the records of the Pool or by telephone communication to any executive officer of such member company. All members shall be provided thirty days notice of the annual meeting. If notice of meetings of members, other than the annual meeting, is given by writing and mailed to the member, such notice shall be placed in the mail not less than five days prior to the meeting. If notice of meetings of members, other than the annual meeting, is given by telegram or telephone communication, it shall be so given not less ~~that~~ than two days prior to the meeting.
- D. Quorum. Members present or represented at any meeting shall constitute a quorum.
- E. Powers. The purpose of any special meeting shall be stated in the notice thereof; but at all such meetings and at annual meetings, members may consider and act upon all matters brought before them.
- F. Repealed as of November 27, 1995.

- G. Proxies. Members may be represented at any meeting by proxy. Members may record their votes by mail on written propositions and such votes shall have the same standing as if cast by such members in person or by proxy.
- H. Minutes of meetings. Minutes of all meetings of the Pool and of the Board shall be sent to all Pool members, all Board members, and the Superintendent.

Sec. 7 Board of Governors.

- A. Powers. The Board of Governors of the Pool shall have the following powers and duties:
 - (1) to establish such operational standards for the Pool as are necessary to the extent such standards are not inconsistent with these rules or Maine law;
 - (2) to designate a Plan Manager;
 - (3) to monitor and enforce the performance of obligations imposed upon the Plan Manager and servicing carriers by this rule and Maine law;
 - (4) to elect such officers as are necessary for the operation of the Pool;
 - (5) to maintain necessary records;
 - (6) to sue or be sued; and
 - (7) such other powers and duties as are set forth by these rules and those necessary and proper to fulfill its responsibilities under Maine law.
- B. Numbers and term of office. The affairs and business of the Pool shall be controlled by a Board of Governors composed of representatives of four insurers which are members of the Pool and five representatives of the Maine business community. To the extent possible, the Board's membership shall collectively reflect business and insurer participating in the residual market mechanism during the entire period in which residual market business subject to this Rule was being written.

The insurer members of the Board shall be elected at annual meetings of the Pool. Except for the transitional election as described in Paragraph (4)

below, Board election shall be made for staggered three-year terms, with at least one member elected each year.

- 2) No insurer or group of insurers under common ownership, management or control may be represented by more than one member of the Board. All insurer representatives shall be knowledgeable employees of suitable senior standing. Each of the four represented insurers or groups of affiliated insurers may provide for an alternate or alternates of similar standing, giving due concern to the need for continuity of participation in Pool management. A represented insurer may in like manner provide for replacement if its representative resigns from the Board or leaves the employment of the insurer or group of affiliated insurers.
- (3) Each insurer representative shall represent one of the following four constituencies. Each company or group of affiliated companies which is a member of the Pool may vote in one, but only one, of categories (a), (b), or (c). In addition, each Pool servicing carrier may vote in category (d).
 - (a) All Pool Members that are Major Insurers as defined in 24-A M.R.S.A. §2392(13) and that wrote at least five per cent (5%) of the total residual market premium remitted to the Pool for at least one of the five policy years 1988 through 1992.
 - (b) All Pool Members that are Major Insurers as defined in 24-A M.R.S.A. §2392(13) and that wrote less than five per cent (5%) of the total residual market premium remitted to the Pool for each of the five policy years 1988 through 1992.
 - (c) All Pool Members that are Minor Insurers as defined in 24-A M.R.S.A. §2392(14).
 - (d) All Pool Members that were servicing carriers at any time during the operation of the workers' compensation residual market mechanism established by this Rule. "Servicing carrier" for purposes of this Paragraph means a Pool Member that issued at least one policy reinsured by the Pool.
- (4) All four insurer seats on the Board shall be open for election at a meeting of the Pool membership which shall be held within 90 days after the effective date of the amendments to this Subsection establishing representation by categories. The representatives from categories (a) and (c) shall serve until the 1998 regular

membership meeting of the Pool, the representatives from category (b) shall serve until the 1997 regular meeting of the Pool, and the representative from category (d) shall serve until the 1996 regular membership meeting of the Pool. Thereafter, each representative shall serve for a full three-year term.

- (5) The Board member representing the business community shall be appointed by the Governor for staggered three-year terms, with at least one member appointed each year, as provided in 24-A M.R.S.A. §2395(2).

- C. Vacancies. If an insurer's representation on the Board is terminated voluntarily or for any other valid reason, the resulting vacancy shall be filled by a simple majority vote of the Board. The new member must represent an insurer from the same category, as established in Paragraph B(3) of this Section, that elected the member who is being replaced. Board members elected in this manner may serve until the next election at the following annual meeting.

Vacancies occurring in positions on the Board representing the business community shall be filled by appointment by the Governor for the unexpired term of ~~be the~~ replaced member.

- D. Place of meetings. The Chairman of the Board may designate the place of all Board meetings, subject to the approval of the Superintendent.
- E. Quorum and voting rights. A majority of the Board shall constitute a quorum. Each member of the Board shall be entitled to one vote. The chairman shall be entitled to vote only in the event of a tie. A member's vote may be cast only by its representative or authorized alternate. Proxy voting shall not be permitted. In the absence of a quorum, the Board shall have no power except that the majority of the members in attendance may adjourn the meeting from time to time until a quorum shall attend. Board action may also be taken, without meeting, by mail or telephone upon affirmative vote of a majority of members, provided all members of the Board are polled and no member demands a meeting. A majority of those Board members voting is necessary to pass a motion.
- F. Meetings. The Board shall meet within 30 days following each annual election of the Board for the purpose of electing officers to serve for the next ensuing year and for the transaction of all of the business within the power of the Board. Other regular meetings of the Board shall be held at such dates as the Board may from time to time determine. Special meetings of the Board may be called anytime by the Superintendent or the Chairman and shall be called by the Chairman upon written request of three members of the Board. Such notice of regular and special meetings

of the Board shall be given as may be determined by the Board, or, in the event the period of notice shall not have been prescribed, as the Chairman shall deem reasonable.

The Superintendent or his designee shall receive notice of and be entitled to attend all Board meetings.

- G. Organization and procedure. The members of the Board shall annually elect a Chairman and Vice Chairman from among their members. The Chairman or, in his absence, the Vice Chairman or, in the absence of both, a Chairman pro-tem elected by the members present, shall act as a Chairman of every meeting of the Board. A person appointed by the Chair shall act as secretary at each meeting and shall keep a record of its proceedings. The order of business of all meetings of the Board shall be determined by the Chairman.
- H. Committee The Chairman may from time to time appoint such committees with such duties and subject to such rules , not inconsistent herewith, as to him in his discretion may seem appropriate.
- I. Additional-officers. The Board of Governors may elect such additional officers as in their judgment may be deemed necessary. All officers except the chairman and vice chairman may be employees of the Plan ~~Wage~~ Manager.
- J. Member Grievance Procedure. Any member insurer who is aggrieved by an act, impending act or failure to act of the Board may, after seeking and failing to obtain redress from the Board, request a hearing before the Superintendent.
- K. Travel expenses. Members of the Board shall be reimbursed by the Pool for reasonable travel expenses within the State of Maine incurred for the purpose of attendance at Board meetings.

Sec. 8 Indemnification.

- A. Any person made or threatened to be made a party to any legal action because such person was a member, or a servicing carrier, or served on the Board or other committee or was an officer or employee of the Pool shall be indemnified against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, or threatened action, except in relation to matters as to which he is adjudged to be liable by reason of willful misconduct in the performance of his duties or obligations to the Pool and, with respect to any criminal actions, except when such person had reasonable cause to believe that his conduct was

unlawful. Such indemnification shall be provided whether or not such person is a member or a servicing carrier or is holding office or is employed at the time of such action. Such indemnification shall not be exclusive of other rights such person may have and shall pass to the successors, heirs, executors or administrators of such person. The termination of any such civil or criminal action, by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such person was liable by reason of willful misconduct or that he had reasonable cause to believe that his conduct was unlawful. If any such legal action is compromised, it must be with the approval of the Board of the Pool; provided, however, the Board of the Pool may delegate to the manager of the Pool the authority to approve any compromise of financial liability requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Board. No indemnification shall be provided as to any:

- (1) payments made to the Pool pursuant to 24-A M.R.S.A. §§2393-2394, including payments made to any other party pursuant to an assignment under 24-A M.R.S.A. §2393(1)(C)(2);
- (2) costs and expenses of any kind incurred in responding to a request for such payments; or
- (3) costs and expenses of any kind, relating in any way to the collection of such payments, incurred by an insurer that is a party to an agreement authorized by 24-A M.R.S.A. §2393(1)(A)(3) or 2393(1)(B)(6).

B. In each instance in which a question of indemnification arises, entitlement thereto shall be determined by the Board which shall also determine the time and manner of payment of such indemnification; provided, however, that a person who has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action shall be entitled to indemnification. The Board may delegate to the Pool manager the authority to determine, in a manner consistent with this section, entitlement to indemnification and the time and manner of payment of such indemnification for any indemnification requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Board of the Pool. Nothing herein shall be deemed to bind a person whom the Board has determined not to be entitled to indemnification, or to preclude such person from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all members, including any named in any such action, on the same basis as other Pool expenses.

- C. Liability limited. Neither the servicing carrier nor any of its affiliates or subsidiaries, nor the officers, agents or employees of the servicing carrier or any such affiliate or subsidiary shall have any liability to the Pool or to any other person or entity with respect to their performance or failure to perform under these rules as a result of a finding that any legislation, administrative regulation, or procedure governing the operation of the Pool or the servicing carrier, is unconstitutional or otherwise unenforceable.

Sec. 9 Administration. The Board shall designate a Plan ~~manager~~ Manager. The Plan ~~manager~~ Manager shall be responsible for monitoring all actuarial activities of the Plan and for the provision of actuarial services necessary in the conduct of the Plan's affairs, and shall be responsible for the handling, recording, accounting and reporting of all Plan financial transactions. The Plan ~~manager's~~ Manager's responsibilities shall include, but not be limited to, the following:

- A. Repealed as of November 5, 1995.
- B. Repealed as of November 5, 1995.
- C. Accounts. The maintenance of deposit accounts for holding funds and securities of the Pool consistent with the provisions of section 16 of this subchapter;
- D. Enforcement and reporting. The enforcement of adherence to these rules by all members, and the reporting of members who do not adhere to these rules to the Board and the Superintendent;
- E. Reporting forms. The requiring of certain forms to be used by member insurers for the periodic reporting to the Plan ~~manager~~ Manager of all data deemed relevant by the Plan ~~manager~~ Manager, and to advise the Superintendent whenever any insurer has failed to provide such a report within thirty (30) days after its due date;
- F. Legal actions. The maintenance of legal actions in the name of the Pool when necessary for collection of debts owed to the Pool or otherwise for the enforcement of such other rights as may inure to the Pool and as directed by the Board;
- G. Assignments. Processing of applications for coverage and the making of servicing assignments where appropriate; and
- H. Monitoring and enforcement. Monitoring and enforcement of servicing performance and data reporting standards applicable to servicing carriers and implementation of such enforcement mechanisms as are adopted by the Board.

Sec. 10. Servicing Carriers.

- A. Performance standard. In order to ensure that residual market policies are serviced in a quality manner and that adequate resources are available to provide the necessary services to insured employers, the servicing performance standards contained in this chapter shall apply regardless of whether servicing is provided by insurers, their affiliate service corporations or independent servicing contractors. For purposes of this chapter, the term "servicing carrier" shall include any insurer, insurer-affiliate service corporation or independent servicing contractor which is providing service for assigned risk policies.
- B. Selection of service carriers. Servicing of residual market policies shall be provided through one of the following methods, which are described in order of priority. Any contractual arrangement entered into by the manager or insurers for the provision of service functions shall require the servicing carrier to provide the same quality of service as is provided to insured employers in the voluntary market and to comply with the minimum performance standards of subchapter IV of this chapter. The Board shall have responsibility and authority for enforcement of these standards.
- (1) The Plan ~~manager~~ Manager may contract with a number of insurers to serve voluntarily as Maine servicing carriers.
 - (2) If adequate servicing cannot be provided under paragraph (1), the Plan ~~manager~~ Manager may contract with service companies which are affiliates of insurers, or with a combination of such service companies and licensed insurers. For purposes of this provision, "affiliate" means a corporation which is under common ownership, management or control with an insurer licensed to write workers' compensation insurance in Maine. Alternatively, a licensed insurer may elect to contract with a servicing contractor which is not an affiliate, subject to the same servicing fee it would be paid if utilizing an affiliate for this purpose, provided the insurer remains responsible for the servicing. In order to be eligible to enter into servicing contracts under this paragraph, any non-insurer service company must have a written agreement with a licensed insurer for issuance of policies which has been approved by both the Plan ~~manager~~ Manager and the Superintendent.
 - (3) If adequate servicing cannot be procured through the methods described in paragraphs (1) and (2), the Plan ~~manager~~ Manager may, with the advice of the Board, award service contracts on the basis of acceptable price and performance standards. Bid specifications shall be established by the Board, but shall be no

less stringent than servicing standards applicable in this chapter. Under this method, policies shall be issued by one or more licensed insurers procured on a voluntary basis by the Plan ~~manager~~ Manager for this purpose.

- (4) If adequate servicing cannot be procured through the methods prescribed in paragraphs (1) through (3), the Superintendent may either
 - (a) award service contracts through a bidding process or
 - (b) order the Plan ~~manager~~ Manager to make servicing assignments to all insurers licensed to write workers' compensation and employer's liability insurance in this State. In ordering the Plan ~~manager~~ Manager to make servicing assignments, the Superintendent shall specify an equitable basis for assignments, taking into consideration each carrier's present residual and voluntary writings.
 - (5) If the Superintendent notifies the Plan ~~manager~~ Manager that efforts to award service contracts through a bidding process under paragraph 4 have been unsuccessful, the Board may approve servicing contracts with insurers, service companies which are affiliates of insurers, independent service companies not affiliated with insurers, or a combination of such service companies and insurers under terms which exclude any servicing premium written under these contracts from the premium base of the servicing insurer or the insurer affiliate of a service company for purposes of any residual market deficit assessment for that policy year if the Board finds that entering into servicing contracts on these terms is in the best interests of the residual market pool. If the Board declines to approve servicing contracts on a basis which excludes the servicing premium from the assessment base and adequate servicing cannot be procured, in whole or in part, through any method other than involuntary assignments under paragraph 4, the Superintendent may award service contracts through a bidding process under terms which exclude the servicing premium from the assessment base of the servicing insurer or insurer affiliate of a service company.
- C. Service allowance. Service carriers shall receive a servicing allowance or fee as compensation for all expenses of servicing.
- (1) Except as provided in paragraph (2), a servicing carrier shall receive as its fee an amount equal to 30% of the total written premium plus producer fees paid on policies serviced. The amount

of the servicing fee shall be subject to annual review by the Superintendent and modified as appropriate. The review shall consider the actual expenses of servicing carriers including, but not limited to, state premium tax, general and other state expenses, unallocated loss adjustment expenses, allocated loss adjustment expenses for workers' compensation claims, and state assessments (e.g. second injury fund). Expenses for commissions shall be separately reimbursed. Allocated loss adjustment expenses for employer liability claims are reportable as losses and are not included within the servicing fee. Any guarantee fund assessments shall be an expense of the Plan and reimbursable to the servicing carriers. For purposes of determining whether a surcharge shall be imposed, the Superintendent shall make findings on an aggregate basis as to the amount of the actual expenses covered by the servicing fee and the portion of the servicing fee which is profit, and shall take any profit into account in determining the return on residual market policies.

- (2) Where servicing is provided by servicing contractors which are not insurers or insurer-affiliates and which are selected in a bidding procedure under subsections B(3) or (4) , the servicing fee shall be determined in the bidding process. Neither that portion of premium corresponding to servicing contractor fees nor the actual fees charged by any servicing contractor to administer responsibilities in the residual market shall be considered in any calculation to determine the amount of any surcharge or any determination of profit of members of the Pool or the imposition, if applicable, of any surcharge.

- D. Servicing carrier duties. The servicing carrier shall process, adjust, settle, compromise, defend, litigate and pay covered compensable loss claims arising out of or in connection with all claims reinsured by the Pool. The servicing carrier may hire and discharge attorneys and independent adjusters. The servicing carrier shall establish and maintain such reported claim reserves as are reasonable and proper. It shall also maintain complete, orderly, and accurate claim files, records and accounts in accordance with generally accepted insurance principles and as directed by the Board. Servicing carrier actions shall at a minimum be in accordance with the performance standards established by this Rule. Any loss adjustment expense shall be paid from the servicing carrier allowance unless authorization to incur such expense and to receive reimbursement for such expense is received from the Board.
- E. Term of assignment . Each servicing carrier to which a risk has been assigned shall continue as the servicing carrier until the policy covering

such risk terminates, whether by cancellation or nonrenewal, and thereafter until all policy obligations are satisfied.

- F. Incidental exposure; other states. The servicing carrier shall, to the extent of its license authority, provide incidental coverage, as described in Part Three of the Workers' Compensation and Employers' Liability Insurance Policy. Premiums and losses that develop for such coverage shall be reported to the Maine Pool.
- G. Other states coverage. Any insured or applicant desiring insurance for known exposures not covered in Maine may request that the servicing carrier furnish insurance for that exposure. The servicing carrier may provide coverage in any state where coverage is reinsurable in any Pool administered or managed by the Plan ~~manager~~ Manager.

The premiums, losses, allowances and producer fees shall be those applicable in such states and all transactions shall be reported to the applicable Pool in accordance with the applicable Pool rules.
- H. Nonpayment of surcharge. The failure of any employer to pay a premium surcharge determined to be required pursuant to 24-A M.R.S.A. §2392(2) or former 24-A M.R.S.A. §§2367 or 2386-A shall be considered a nonpayment of premium for purposes of determining the right of a workers' compensation insurer to cancel a policy.

Sec. 11 Collection and Remittance of Premium to Pool.

- A. Report and Payment requirement. On or before the 15th day of February, May, August, and November of each year, each servicing carrier shall report to the Pool all premium written and remit to the Pool all premium received, retaining that portion of premium equal to its servicing fee, commission payments, and paid losses. Assessments, other than guaranty fund assessments, and premium taxes on all premiums collected shall be paid by the servicing carrier as part of its expense.
- B. Limited liability of Pool. The Pool shall not be required to reimburse any servicing carrier if loss of its servicing fee results from its failure to collect premiums owed unless the servicing carrier has made a diligent collection effort in accordance with the service performance standards of this chapter and payment has been approved by the Pool manager.
- C. Return Premiums. Servicing carriers shall be promptly reimbursed by the Pool for any return premiums paid to insureds which had previously been remitted to the Pool.

- D. Insolvent servicing carrier: subrogation rights. In the event of the insolvency of a servicing carrier, the Pool shall automatically be subrogated to the rights of the servicing carrier to collect further premiums due or to become due on risks assigned to it, and the insured shall be protected in any payment of such premiums made to or upon the order of the Pool. Any premiums received by the insolvent servicing carrier after such insolvency shall be received in trust for the Pool and shall be promptly paid over to the Pool, except that the servicing carrier may retain that part of any servicing fee which has been earned up to the date of receipt. Any premiums so received by the Pool shall be applied to the payment of losses, and an accounting of such premiums shall be made to the insolvent carrier or its legal representatives in connection with any refund.

Sec. 12 Payment of Losses and Pool Expenses.

- A. Reporting and payment of losses. The servicing carrier shall pay all losses accruing on risks assigned to it as each loss becomes due and payable. On or before the 15th day of February, May, August, and November of each year, each servicing carrier shall report to the Plan ~~manager~~ Manager all claims arising and losses paid to the end of the preceding quarter on account of risks assigned to it together with the then estimated value of all claims outstanding. For purposes of this rule, losses shall include assessments levied against servicing carriers by the Maine Insurance Guaranty Association with respect to the workers' compensation insurance account authorized by 24-A M.R.S.A. §4436, sub-§1.

If losses paid exceed premiums written, less servicing fees and producer fees, then within thirty days after the receipt of such report or within the Plan shall reimburse each such servicing carrier for the losses paid by such servicing carrier.

- B. Pool general expenses. Expenses incurred by the Pool in the administration of its affairs, and not allocable directly to any residual market risk, shall be paid from the general funds of the Pool. A record shall be kept of all such expenses and the Plan ~~manager~~ Manager shall provide to the Board and to the Superintendent a written accounting of such expenditures at the end of each quarter. Except with respect to claims, the cost of the interpretation of physical and X-ray examinations of employees in assigned dust hazard risks, provided the employer pays for the making of such examinations, shall be a proper charge against, and shall be paid from, the general funds of the Pool. Payments by the Pool shall be limited to the following:
- 1) the Pool's administration expense;

- 2) reimbursement for losses paid under assigned risk policies;
- 3) return premiums on such policies;
- 4) payment of such refunds as may be allowed;
- 5) reasonable expenses incurred by Board members while performing Board business; and
- 6) reasonable and necessary amounts charged for the collection of any part of any premium on any assigned risks, provided that advance written approval to incur such collection costs is obtained in each case from the Pool manager. Such approval shall be given when it reasonably appears that diligent effort to collect the premium due has been made by the member in the regular course of business and has been ineffective.

The Pool shall not assume for payment, and shall not be liable to pay, any expenses of any nature incurred by members except as provided herein.

- C. Pool reimbursement. The servicing carrier shall reimburse the Pool for any monies recovered less expenses incurred in making that recovery by way of subrogation or otherwise on a claim for which the servicing carrier has already been reimbursed. If a servicing carrier's subrogation action is unsuccessful, the servicing carrier shall be reimbursed only for payments to any independent attorney representing the servicing carrier in the subrogation action and the court costs related thereto.

Sec. 13. Residual Market Deficits; availability of funds.

In order to give notice to Pool members and the Superintendent of whether any surcharge, or the failure to surcharge, will result in cash deficits for the Pool during any quarter, the Pool manager shall certify quarterly to the Superintendent anticipated premium, investment income, losses, and expenses.

Whenever any such report indicates a temporary cash inadequacy is likely to occur in the Pool, the Board shall arrange short-term debt financing for the Pool in order to ensure that the Pool can meet its loss and expense obligations as they become due. Whenever such short-term debt financing is not available, the manager will notify the Board and the Superintendent. The Board shall be allowed ten days to take appropriate action to resolve the situation. If the situation is resolved, the Board shall advise the Superintendent. If the problem is not resolved or if the Board waives the ten day period, the Superintendent shall take appropriate action.

Sec. 14. Repealed as of November 5, 1995.

Sec. 15. Repealed as of November 5, 1995.

Sec. 16. Accounting and Records.

- A. Adequate system required. There shall be established and maintained by the Pool an adequate accounting system applicable to member companies, servicing entities and the Pool recognizing income received and expenses to be administered by the Pool. Not less frequently than each quarter, servicing entities shall remit to the Plan ~~manager~~ Manager any written premiums which exceed those paid expenses and losses which are properly chargeable to residual market risk policies. Such funds shall be remitted to the Plan ~~manager~~ Manager within 45 days following the close of the quarter reported upon.

Funds so received by the Plan ~~manager~~ Manager shall be invested and the principal and interest thereon shall be available for redistribution to servicing entities based upon a reasonable projection of their cash needs, which shall be substantiated and revised quarterly. The Board shall establish an investment policy in accordance with the prudent man standard, recognizing the Plan ~~manager's~~ Manager's fiduciary capacity with respect to such funds.

Funds in the possession of servicing entities shall be invested at an investment rate no less than the median yield for servicing carrier insurers and shall be credited to the account of the Pool in any period when a service carrier's residual market operating results produce a positive fund balance.

- B. Right to inspect. The Board and/or any designated representative thereof shall have the right at all reasonable times to inspect the books, records and files of the servicing carrier so far as they pertain to the operations of the Plan, and shall have the right to copy or abstract such books, records and files at the Plan's expense.

If an additional claims examination is deemed necessary by the Board as a result of advice received from a general audit or examination such audit or examination shall be performed at the expense of the Pool. The servicing carrier shall bear all expenses of any state insurance department audit or examination.

Sec. 17. Applications. For purpose of application to the 1988 ~~plan~~ Plan, a renewal offer by any servicing carrier retaining a license to write workers' compensation regarding a policy reinsured in the 1987 Maine residual market shall be

deemed sufficient application to the 1988 Plan. A policy reinsured in the 1987 Maine residual market written by a company no longer retaining a license to write workers' compensation and for which a legal notice of nonrenewal has been issued can only be reissued in the 1988 reinsurance Pool through application to the 1988 ~~plan~~ Plan in accordance with normal initial application procedures.

Sec. 18. Termination of the Pool. If the Board determines that all claims reinsured by the Pool have been fully discharged or are subject to settlement agreements, that there is no reasonable likelihood of any new or reopened claims, and that the Pool has sufficient assets to pay all incurred obligations in full, the Board may by unanimous vote adopt a proposal to terminate the Pool and to make a final distribution of the Pool's remaining assets.

- A. The Board shall submit the proposed plan of final distribution to the Superintendent for review.
- B. If the Superintendent approves a plan as filed or subsequently modified following review, then at least 30 days before the deadline for filing objections, the Superintendent shall publish a notice on the Bureau's website, and shall submit a copy of the notice for publication in each newspaper designated by the Secretary of State for publication of notices of proposed rulemaking. The notice shall include:
- (1) A general description of the proposed plan of final distribution;
 - (2) Notice that anyone objecting to the plan may request a hearing before the Superintendent;
 - (3) Instructions for how to file an objection; and
 - (4) A date by which all objections must be filed.
- C. The Superintendent may hold an adjudicatory hearing either:
- (1) To consider any timely objections, except that the Superintendent may summarily grant or deny an objection without hearing if the Superintendent determines that a hearing is not necessary to resolve the issues raised; or
 - (2) Without request of others, for any purpose deemed necessary by the Superintendent.
- D. After the adjudicatory hearing, or after determining that no hearing is necessary, the Superintendent shall issue an order that must either approve the plan as proposed or state the Superintendent's rationale for

modifying or rejecting the plan. The order shall be the Superintendent's final agency action with respect to the plan.

E. Once the Superintendent's order approving or modifying the plan has become final and unappealable, the Pool's existence shall terminate as soon as the final distribution is complete and the Board has submitted its final report under 24-A M.R.S.A. § 2395(6).

SUBCHAPTER III:

(Repealed effective November 5, 1997)

SUBCHAPTER IV: SERVICING CARRIER PERFORMANCE STANDARDS

Section 1. General Standards

Carriers receiving assignments shall provide a high quality service, at a level comparable to that customarily provided by the insurance industry to similar risks in the voluntary market. Any services necessary as a result of regulatory or statutory requirements shall automatically apply. The standards set forth in this subchapter prescribe the minimum acceptable in the residual market.

Section 2. Disability Management

A. Disability Control

- (1) Maximum medical improvement (MMI): The servicing carrier shall take appropriate steps to establish and document MMI in each case file for partial incapacity cases with dates of injury before October 17, 1991.
 - (i) MMI shall be established by decree, by formal agreement, by the payment of a permanent impairment award, or by strong medical evidence.
 - (ii) If MMI has not been established for a partial incapacity case, the case file shall contain a documented plan including discussion of specific measures by which the servicing carrier intends to establish MMI with the Workers' Compensation Board.
- (2) The servicing carrier shall establish disability control and track weeks of disability in accordance with 39 M.R.S.A. §§ 55-A or 55-B, and 39-A M.R.S.A. §§ 211–214, as appropriate.

- (i) The case file shall clearly indicate whether disability payments are being made under § 54-B, total incapacity, or under § 55-B (or 39-A M.R.S.A. § 213), partial incapacity.
- (ii) If payments are being made under 39 M.R.S.A. § 55-B or 39-A M.R.S.A. § 213, the servicing carrier shall track payments and/or weeks of disability against the statutory maximum duration of 400 weeks after MMI for dates of injury before October 17, 1991; 520 weeks of compensation for dates of injury from October 17, 1991 through December 31, 1992; 260 weeks of compensation for dates of injury on or after January 1, 1993.
- (iii) Every case file shall be reviewed at least every 6 months.

B. Claimant Contact

- (1) Continuing contact with the unrepresented injured worker at least every 6 months, and with the physician at intervals consistent with the injury and estimated length of disability and with obtaining an estimated return to work date.
- (2) Medical examinations under 39-A M.R.S.A. §§ 207 or 312 where questions of disability, causal relationships, and treatment exist or where reports of treating physicians are not forthcoming
- (3) Activity checks consistent with length of disability and/or suspected fraud, at least every 6 months. Activity checks may include but are not limited to phone calls to the claimant and/or his/her employer, in-person contact, surveillance, or contact with a designated representative.
- (4) Availability of return to modified or light work duties consistent with medical restrictions, if return to regular job does not appear medically feasible or is unavailable.
- (5) Vocational rehabilitation, in the form of alternative work, modified work, job placement, on the job training, and/or schooling, ensuring strict compliance with statutory standards.

C. Coordination of benefits. The servicing carrier shall maintain an ongoing review of open cases with regard to each of the following factors, as may be appropriate in a particular case:

- (1) Employment Rehabilitation Fund possibilities;

- (2) Social Security and unemployment benefits;
- (3) Third party recovery;
- (4) Progress of claimant's medical condition toward maximum medical improvement;
- (5) Potential propriety of vocational rehabilitation.

Claimant activity and dependency checks shall be made at least every 6 months.

- D. Timely indemnity benefit payments. All indemnity benefit payments will be made promptly, in accordance with statutory provisions.
- E. Medical Cost Management
 - (1) Review all medical bills or medical abstracts/documentation generated from the actual bills to verify reasonableness of charges and necessity of services. Appropriate reference to standards, scales, or schedules of appropriate charges adopted to the Workers' Compensation Board pursuant to 39-A M.R.S.A. § 209 is required.
 - (2) Where no questions of liability or reasonableness exist and physician reports have been received, pay all bills within 30 calendar days.
 - (3) Where questions of liability or reasonableness exist, promptly investigate and obtain such further information as is necessary to resolve questions.
- F. Settlements. Where appropriate, carriers shall identify and pursue settlement opportunities. Any settlement shall be based on sound claims judgment consistent with liability and medical evidence developed, in accordance with the law and benefit structure.
- G. Claim Reopenings. Carriers shall record and document all reopenings of claims previously thought to be closed, including reason for the reopening and action taken or plan of action required to manage/close the case.

Section 3. Litigation Management

- A. Servicing carriers shall properly prepare all controverted cases, and cases petitioned for additional or subsequent ruling, before conference, hearing, or trial. Preparation shall include but not be limited to the following:
- (1) The carrier shall make a pre-litigation offer for the purpose of establishing the “prevail standard” baseline for the payment of legal fees, or explain in the file why it has chosen not to do so;
 - (2) Complete pretrial preparation in the areas at issue, such as coverage, liability, medical;
 - (3) Have available all necessary lay and professional witnesses or their depositions before formal hearing or trial;
 - (4) Have medical reports and opinions and witnesses available and ready for testimony or deposition if trial encompasses issues of extent of disability and/or permanency, depending on statutory requirements;
 - (5) Servicing carriers shall expeditiously pursue the case through the mediation and hearing process, as appropriate. Where appropriate, servicing carriers shall pursue settlement negotiations at any point during the dispute resolution process;
 - (6) Servicing carriers shall base all settlements of permanency or compromise on sound claims judgment consistent with liability and medical evidence developed, in accordance with the law and benefit structure;
 - (7) Servicing carriers shall deliver sufficient file material on a timely basis to the attorney or other person handling the case to allow for adequate preparation for conference, hearing, or trial;
 - (8) After settlement, the servicing carrier shall file a settlement report which adequately and accurately explains the amount paid.

Section 4. Reserving Practices

- A. Performance Standards:
- (1) Servicing carriers shall establish timely, and to the fullest extent possible accurate, medical and indemnity loss cost estimates commensurate with all factors known and developed;

- (2) Estimates of reserves shall be revised whenever payments are made or developments occur that cause changes to the ultimate loss projections;
 - (3) In reporting estimates on fatal and permanent total cases, servicing carriers shall use tables authorized by the Superintendent of Insurance;
 - (4) Reserve estimates shall reasonably consider all contingencies involved in a claim, including but not limited to survival and mortality, recovery and morbidity, remarriage, return to work, escalation, and the time value of money.
 - (5) Reserving of Pool cases shall use consistent methodologies. Servicing carriers shall ensure that these practices are followed consistently within their internal organizations among claims adjusters, supervisors, and managers. Carriers shall have their reserving practices documented in a way that will ensure they are consistently applied, and shall make these documents available for review by the Pool at the Board's request.
 - (6) Servicing carriers shall keep the Pool apprised of changes in methodologies on an ongoing basis.
- B. Annual Report of Servicing Carrier Practices. The Board shall conduct an annual review of servicing carrier reserving practices and procedures, and issue a report which shall be submitted to the Superintendent of Insurance and to the Pool on or before April 1 of each year. The report shall include a review of actual claim files and comparison of actual and projected incurred costs. Appropriate sampling procedures may be used in conducting the claim file review. The review shall include the following areas:
- (1) Conformity with performance standards. Servicing carriers shall make their reserving practices available for review by the Pool at the Board's request.
 - (2) Consistency of reserving practices,
 - (i) applied to individual cases, and
 - (ii) among servicing carriers;
 - (3) A review and evaluation of case reserves established by each servicing carrier in relation to the information that was known or should have been known at the time of the filing of the reserve;

- (4) The timeliness of case review and the payment of claims;
 - (5) Subrogation practice;
 - (6) Overall claim management and cost control measures;
 - (7) Consultation with the Pool's auditor(s) and actuary(ies);
 - (8) Other relevant areas selected by the Board.
- C. The Board shall require its auditor(s) to report on servicing carrier reserving practices to the Pool after the completion of each annual audit cycle and in support of the Annual Report of Servicing Carrier Practices.
- D. The Pool's actuary(ies) shall be required to meet with servicing carrier claims managers at least annually to review reserving practices as they relate to:
- (1) the preparation of the Annual Report of Servicing Carrier Practices, and
 - (2) the Pool's annual actuarial projection;

Section 5. Financial Reporting

- A. Carriers shall ensure that all payments of Pool claims and all reimbursement requests to the Pool are adequately documented and maintained in sufficient detail and format to permit verification of all amounts that roll-up into the Pool's accounting records.
- B. The Board shall conduct an annual financial review of servicing carrier claim payments, reimbursement requests to the Pool, and case reserves, in accordance with audit program requirements. The review shall include a review of actual claim files. Appropriate sampling procedures may be used in conducting the claim file review. The review shall include the following areas:
- (1) Conformity with generally accepted and statutory accounting practices;
 - (2) Consistency of accounting and reserving methods;
 - (3) Timeliness of recording transactions;

- (4) Appropriate reporting and tracking of case adjustments and reopenings;
- (5) Other relevant areas selected by the Board.

Section 6. Board Review

The Board of Governors shall from time to time review the servicing carrier performance standards and recommend to the Superintendent such changes as are appropriate to ensure a high quality service and to ensure solvency of the Pool.

STATUTORY AUTHORITY: 24-A M.R.S.A. §212 and Chapter 25, Subchapter II-A, with specific reference to §§2320, 2323, 2364, 2366, 2367, and 2371.

EFFECTIVE DATE: This rule shall be effective March 20, 1988.

AMENDED:

March 5, 1992	(Section 10(B)(5) and 15).
July 1, 1993 (EMERGENCY)	
September 29, 1993 -	Sec. 7 (B, C & K)
November 5, 1995 -	Subchapter I, Sec. 2, 5(C)
	Subchapter II, Sec. 7(A)(2), (B), (C); Sec. 9(A, B, C)
	Sec. 10(C)(2), (H); Sec. 13, 14, 15
	Subchapter IV, Sec. 2(B)(6)(a)
November 27, 1995 -	Subchapter II, Sec. 3, 4, 6(F), 7(B), (C).
March 17, 1996 -	Subchapter II, Sec. 8.

EFFECTIVE DATE (ELECTRONIC CONVERSION): January 14, 1997

AMENDED: November 5, 1997 - Subchapter III repealed, Subchapter IV repealed and replaced.

CORRECTION:

September 14, 2022	Subchapter II, Sec. 7(J) (misspelling only)
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APAO ACCESSIBILITY CHECK: July 25, 2025

CORRECTION TO MISSPELLING IN HISTORY SECTION: July 25, 2025