



August 15, 2023

CIRCULAR LETTER NO. 2418

To All Members and Subscribers of the WCRIBMA:

REMOVAL OF THE AUDIT NONCOMPLIANCE CHARGE

On August 14, 2023, the Massachusetts Division of Insurance (“DOI”) approved the WCRIBMA’s attached Filing Memorandum and Exhibits to remove the Audit Noncompliance Charge (ANC) rule, endorsement, and statistical code. The ANC was established in 2019 and enabled insurers in the Commonwealth of Massachusetts to charge employers that do not allow their insurer to examine and audit the employer’s records related to a workers’ compensation insurance policy. **The ANC endorsement (WC 00 04 24) should not be used on any Massachusetts workers’ compensation policy with an effective date on or after May 1, 2021.**

The internet-based versions of the affected MA Manual pages, accessible at www.wcribma.org, will be updated soon.

Please contact Dan Crowley (617-646-7594 or dcrowley@wcribma.org) if you have any questions.

DANIEL M. CROWLEY, CPCU
Vice President – Customer Services

Attachment

Filing Memorandum

REMOVAL OF THE AUDIT NONCOMPLIANCE CHARGE

Purpose

This filing proposes to remove the Audit Noncompliance Charge (ANC) rule, endorsement, and statistical code that was established in 2019 that enabled insurers in the Commonwealth of Massachusetts to charge employers that do not allow their insurer to examine and audit the employer's records related to a workers' compensation insurance policy.

Background

On April 4, 2019, the WCRIBMA issued Circular Letter 2348 announcing the establishment of an Audit Noncompliance Charge (ANC), which enabled workers' compensation insurance carriers to apply an ANC to employers insured in the voluntary market if those insureds do not allow the insurer to examine and audit their records as required. In accordance with the Commissioner's requirements, a two (2) year pilot program for the ANC was established for new and renewal workers' compensation policies written in the voluntary market with an effective date between May 1, 2019 and April 30, 2021 (Pilot Period).

On April 28, 2021, the WCRIBMA issued Circular Letter 2387 announcing that it did not seek an extension of the ANC Pilot Program and that it expired on 11:59 P.M. on April 30, 2021.

Proposal

This item proposes to:

1. Remove the audit noncompliance rules in the following Massachusetts manuals:
 - MA Workers' Compensation & Employers Liability Insurance Manual
 - MA Workers' Compensation Statistical Plan
2. Revise the Voluntary Market Premium Algorithm to remove the placement of the ANC within that algorithm.
3. Withdraw the ANC Endorsement (WC 00 04 24) in Massachusetts.

Impact

These changes will have no premium impact.

Implementation

The attached exhibits include the proposed changes necessary to implement this filing. Upon approval by the DOI, the WCRIBMA will publish new Manual pages.

Exhibit 1: Marked up MA Manual Rule XV, Appendix E

Exhibit 2: Revised - clean MA Manual Rule XV, Appendix E

Exhibit 3: Marked up MA Stat Plan manual page changes

Exhibit 4: Revised - clean MA Stat Plan manual page changes

Exhibit 5: Marked up ANC Endorsement

Exhibit 1

RULE XV – FINAL EARNED PREMIUM DETERMINATION

A. PREMIUM DETERMINATION

1. Final earned premium is the total premium earned during the policy period. It is calculated using actual payrolls multiplied by the rate for each classification. Final earned premium includes the application of premium elements applicable to the employer.
2. Final earned premium for the policy must be determined on actual payroll as determined by the carrier at audit, instead of on estimated payroll or other premium basis.
3. Determination of final earned premium is governed by the approved rules, classifications, and rates, subject to modification by applicable rating plans.
4. The carrier has the right to calculate final earned premium based on an examination and audit of all records related to the policy.
5. Audited information must coincide with the effective and expiration dates of the policy. Reasonable deviations from this standard that do not affect the earned premium are permitted to coordinate the audit with the first of the nearest month.

~~B. AUDIT NONCOMPLIANCE CHARGE~~

- ~~1. If the employer does not comply with Part Five Premium, Section G. (Audit) of the policy, the employer will be considered noncompliant with the policy terms and conditions. When this occurs, the carrier may apply an Audit Noncompliance Charge (ANC) equal to two times the estimated annual premium.~~
- ~~2. On a multistate policy, the ANC applies only to the exposure in the states where an employer is noncompliant with an audit and where this ANC rule is approved for use.~~
- ~~3. The application of the ANC is subject to the following conditions:
 - ~~a. Carriers must comply with all applicable rules or regulations related to audits of workers' compensation insurance policies in this Manual.~~
 - ~~b. A carrier that desires to issue the ANC Endorsement to a Massachusetts policyholder must issue the ANC Endorsement for all other Massachusetts policyholders that the carrier writes within the same workers' compensation insurance classification.~~
 - ~~c. The Audit Noncompliance Charge Endorsement must be attached to the policy at inception of the policy term being audited.~~
 - ~~d. The carrier must make two attempts to obtain the audit information and/or complete the audit. The first and second attempt shall be separated by at least five (5) business days. The second attempt shall be by, or be accompanied by, e-mail to the policyholder and its insurance agent (if any) to the last known mail and e-mail addresses for both on file with the carrier. At each attempt, the carrier must notify the employer regarding the specific, required records and the amount of the ANC to be applied if the employer fails to allow an examination and audit of all records that relate to the policy.~~
 - ~~e. Carriers shall provide their Massachusetts policyholders subject to the ANC Endorsement and their insurance agents (if any) with written notice by certified mail of a final opportunity to cure the policyholder's failure to permit the carrier to conduct an audit. This final notice shall be separated from the second attempt to obtain an audit by at least five (5) business days. The policyholder shall have ten (10) days to cure such failure from the date of said notice.~~
 - ~~f. The carrier shall maintain written documentation of its good faith attempts to obtain the audit information and to provide notice of an opportunity to cure, including dates and times of contacts with the policyholder, the results of such contacts, copies of any notices provided to the policyholder, and any correspondence or records received from the policyholder.~~~~

~~g. When a carrier applies an ANC to the policy, and mid-term cancellation is permissible, the carrier may cancel the policy and must issue a cancellation notice in accordance with applicable Massachusetts state laws and/or regulations. h. A policyholder has the right to appeal the application of the ANC pursuant to the procedures in the Massachusetts Notice to Policyholder Endorsement. The policyholder shall not be required to pay the ANC pending an appeal to the WCRIBMA or a further appeal to the DOI.~~

~~4. This ANC rule applies to mail/email, telephone, and physical audits.~~

~~5. The ANC may be applied to guaranteed cost policies as well as retrospectively rated policies.~~

~~6. The carrier must refund the ANC to the employer or apply it to any outstanding balance on the policy, after the employer has paid the ANC and has allowed an examination and audit of all records that relate to the policy.~~

~~7. A carrier shall immediately notify the WCRIBMA of any Massachusetts Policyholder that elected to pay the ANC in lieu of complying with the carrier's requests to perform the audit.~~

Part III (Continued)

MASSACHUSETTS WORKERS' COMPENSATION VOLUNTARY MARKET TOTAL PREMIUM CALCULATION			
■ - Indicates that the given Rating Element applies to the column.			
Rating Element	Statistical Code	All Classes	Calculation
(21) Premium Subject to Short Rate Penalty		■	(11) + (14) + (16) + (17) + (20)
(22) Short Rate Penalty Factor	0931	■	Table look up based on (12) x 365 days
(23) Short Rate Penalty Premium	0931	■	[(21) / (12)] x [(22) - (12)]
(24) Premium Subject to Total Policy Minimum Premium		■	(21) + (23)
(25) Employers Liability Increased Limits Minimum Premium	9803-9816	■	Part II, (8)
(26) Admiralty/FELA Minimum Premium	9817-9822, 9840, 9849	■	Part II, (12)
(27) Class Minimum Premium ³⁵	0990	■	
(28) Total Policy Minimum Premium		■	(5) x [(25) + (26) + (27)]
(29) Balance to Total Policy Minimum Premium	0990	■	If (24) < (28) then [(28) - (24)], else 0
(30) Audit Noncompliance Surcharge³⁶	9757	■	
(30) 31 Total Premium		■	(24) + (29) + (30)

²³ Part II, Column A

²⁴ Part II, Columns B + C

²⁵ Traditionally, Large Deductibles apply to losses under both Part One (Workers' Compensation) and Part Two (Employers' Liability) of the policy, therefore, the premium adjustment for these types of deductibles enter the algorithm here. Large Deductible Credits are reported under code 9663.

²⁶ See endnote 16.

²⁷ If the policy is written on a multi-state basis, the discount factor will be based on the sum of the applicable premiums across all states.

For Large Construction Projects the discount factor will be based on the sum of the premiums for the combined project-related policies.

For the purpose of calculating premium discount for two or more policies that are issued to the same insured by one or more carriers that are under the same management, the total standard premium for those policies must be combined unless the insured instructs the carrier otherwise.

Premium Discount is not applicable to policies written with Large Deductibles.

²⁸ The QLMP Program relates to residual market risks and is available for a period of four years for a given insured. However, if a carrier voluntarily insures a risk previously written in the residual market that was paying a reduced premium because of the application of a QLMP credit factor, the carrier must continue to apply the QLMP factor for the balance of the four year eligibility period for those policies written on a guaranteed cost basis.

QLMP is not applicable to policies written with Large Deductibles.

²⁹ The QLMP premium adjustment is a negative value in the algorithm. For purposes of Unit Statistical Reporting, the value is assumed to be negative.

³¹ Note that for policies subject to a Short Term Policy Pro Rata Factor that are cancelled mid-term, the Short Term Policy Pro Rata Factor needs to be adjusted by the Ratio of Actual to Original Policy Term. Assume, for example, the following applies to a normal policy that remains in-force for its original duration of one year:

- Expense Constant \$240
- Loss Constant 50
- Minimum Premium 750

The table that follows, details the impact on the expense constant, loss constant, and minimum premium if the policy is written as a short term policy and/or if the policy is cancelled early.

Original Policy Duration	Actual Policy Duration	Policy Eligible for Short Term Policy Pro Rating	Short Term Policy Pro Rata Factor	Ratio of Actual to Original Policy Term	Expense Constant	Loss Constant	Minimum Premium
(1)	(2)	(3)	(4)	(2) / (1)	\$240 x (4) x (5)	\$50 x (4) x (5)	\$750 x (4)
365	365	N	1.000	1.000	240	50	750
365	91	N	1.000	0.249	60	12	750
182	182	N	1.000	1.000	240	50	750
182	91	N	1.000	0.500	120	25	750
182	182	Y	0.499	1.000	120	25	374
182	91	Y	0.499	0.500	60	12	374

(4) - If (3) = "Y" then (1) / 365, else 1.000

Note that for policies that are cancelled early, the calculation for a policy subject to short rating and a policy subject to pro rating are the same. The impact of short rating comes later in the premium algorithm.

Also note that the minimum premium is never adjusted by the Ratio of the Actual to Original Policy Term.

³² If more than one classification applies for the state of Massachusetts, use the loss constant for the classification which has the highest loss constant. Note that loss constants do not apply to all class codes in Massachusetts.

³³ Expense constants in Massachusetts are a function of standard premium. Policies with standard premiums less than \$200 are subject to a lesser expense constant than policies with \$200 or more of standard premium. Additionally, a special rule applies for the expense constant for private residence per capita classifications.

³⁴ Only include payroll in \$100's for class categories from Part I, Columns A and B. Including the exposure for the supplemental rates, Part I, Columns D, F, and G, would effectively double count payrolls already included in Part I, Columns A and B.

³⁵ For a policy with two or more classifications, apply the highest minimum premium for any classification on the policy. Note that for a classification to which the USL&HW Act factor is applied, the classification minimum premium should be adjusted in a similar manner as the rate by multiplying the classification minimum by the USL&HW Act factor before determining the highest minimum premium for any classification on the policy.

~~³⁶ When employers do not allow the carrier to examine and audit all records that are related to the policy, the carrier may apply a charge equal to two times the Estimated Annual Premium in accordance with MA Manual Rule XV B Audit Noncompliance Charge.~~

Exhibit 2

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Exhibit 3

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

Effective: ~~March 1, 2020~~
Distributed: ~~July, 2020~~
PART III - DEFINITIONS

Premium Components						
Components	Aggregate Financial Premium Levels				Unit Statistical Report Premium	Class Codes
	Standard Premium at Bureau Designated Statistical Rate Level	Standard Premium at Company Level	Net Premium	Direct Premium		
12. Large Deductible Premium Credit			x	x	x	9663,9664
13. Premium Discount			x	x	x	0063, 0064
14. QLMP Credit				x	x	9880
15. Admiralty / FELA Employers Liability Increased Limits	x	x	x	x	x	9817-9822, 9840, 9849
16. Loss Constant	x	x	x	x	x	0032
17. Expense Constant	x	x	x	x	x	0900
18. Balance to Total Policy Minimum Premium Adjustments	x	x	x	x	x	0990
19. Terrorism Insurance Program Premiums				x	x	9740
20. Short Rate Penalty Premium	x	x	x	x	x	0931
21. Retrospective Rating Adjustments			x	x		NA
22. Special Circumstances:						
a. Independently Filed Carrier Program			x	x	x	9721 – 9724
b. Formerly Self Insureds			x	x	x	9129, 9136
c. No-Massachusetts Exposure			Must be zero			1111
d. Paid Furloughed Employees			Must be zero			0012
23. Audit Noncompliance Charge					x	9757
24. Deductible Reimbursements			Do Not Report			
25. Policyholder Dividends			Do Not Report			
26. DIA Assessment			Do Not Report			

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

Effective: ~~March 1, 2020~~

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PART III - DEFINITIONS

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sooner than thirty (30) months after the coverage expiration date. All claims must be closed and all incurred losses finalized prior to the submission of the adjustment.

For more information refer to the [Circular Letter Number 1524](#), dated February 7, 1990.

c. No-Massachusetts Exposure

When a policy is issued either on an "if any" basis, or as a multi-state policy, and upon audit it is determined that Massachusetts exposure did not develop on such policy, the first unit statistical report should be submitted with a single exposure record employing statistical class code 1111.

d. Paid Furloughed Employees

Payments by an employer to paid furloughed employees as a result of the COVID-19 (coronavirus) pandemic must be reported to statistical class code 0012.

~~23. Audit Noncompliance Charge~~

~~Report the Audit Noncompliance Charge to Statistical Code 9757. Refer to Rule XV in the the [Massachusetts Workers Compensation and Employers Liability Insurance Manual](#) for the method of determining the Audit Noncompliance Charge.~~

24.23. Deductible Reimbursements

Do not report deductible reimbursements as premiums.

In Massachusetts workers' compensation insurance, the insurance company is required to pay for all claims including those below any applicable deductible, large or small. If a deductible applies to a given policy, the insurance company will seek reimbursement from the insured for amounts below the deductible.

25.24. Policyholder Dividends

Do not report policyholder dividends as premiums.

Any amounts paid or credited to policyholders that are not fixed in the insurance contract but are dependent on either the experience of the insurance company or employer or the discretion of the insurance company management.

26.25. DIA Assessment

Do not report DIA assessment as premiums.

For more information, visit the DIA website at: www.mass.gov/dia

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

Effective: ~~May 1, 2019~~
Distributed: ~~April, 2019~~
PART III - DEFINITIONS

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D. Expenses

Part D of the definitions is organized into the following components:

- Expenses Reported in Aggregate Financial Calls
- Expenses Reported in Unit Statistical Reporting Data

1. Expenses Reported in Aggregate Financial Calls

a. Other Acquisition, Field Supervision and Collection Expenses Incurred

Acquisition, field supervision and collection expenses **other than commission and brokerage** as defined in the Annual Statement instructions.

b. General Expenses

Includes all general expenses, **including** expenses incurred for auditing, inspecting, and administrative expenses incurred in conducting an insurance operation. **General expenses include the Boards and Bureau Expenses which are also reported separately.**

c. Boards and Bureau Expenses

Boards and Bureau expenses include dues, assessments, fees, and charges of:

- Underwriting boards, rating organizations, statistical agencies, and audits bureaus
- Underwriters' advisory and service organizations
- Accident and loss prevention organizations
- Claims organizations
- Specific payments to boards, bureaus, and associations for rate manuals, revisions, fillers, rating plans, and experience data.

d. Incidental Income

Any revenues received from finance charges, installment fees, check bouncing fees, reinstatement fees, ~~audit noncompliance charges~~ or similar charges, related to Massachusetts workers' compensation policies, imposed on a policyholder by their insurance company.

e. Unreported Expenses

Expenses associated with the collection of incidental income for workers' compensation policies. Do not report any amount otherwise reported in any of the other expense category.

f. Uncollectible Premium Receivables

Any premium receivable that has been written off because the determination was made that it was uncollectible.

~~Note that unpaid audit noncompliance charges should not be included in uncollectible premium receivables.~~

Note that this does not impact earned premiums or written premiums because uncollectible premium receivables are written off against other income.

g. Loss Adjustment Expenses

For aggregate financial reporting, loss adjustment expenses can be classified into two broad categories: Defense and Cost Containment (DCC) and Adjusting and Other (AO). **Loss adjustment expenses should be reported in accordance with the current NAIC definitions.**

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

Effective: ~~May 1, 2019~~
Distributed: ~~April, 2019~~
Part VI – Appendices

Appendix II – Statistical Class Codes
Page 2

Code	Phraseology	Premiums Assumed to be a Positive Value	Subject to Experience Mod.	How is the Exposure Expressed	Can Losses be Coded to this Class
7453	Non Ratable Element – Air Carrier – Commuter Flying Crew-NR	Yes	No	Payroll	No
9034	Rate Deviation – Not Subject to Experience Rating	No	No	Blank	No
9037	Rate Deviation – Subject to Experience Rating	No	Yes	Blank	No
9046	Construction Class Premium Adjustment	No	No	Blank	No
9129	Former Self-Insured Rating Plan Deposit	Yes	No	Blank	No
9136	Former Self-Insured Insurance Charge	Yes	No	Blank	No
9663	Large Deductible Adjustment-Not Subject to Experience Rating	No	No	Blank	No
9664	Deductible Adjustment-Subject to Experience Rating	No	Yes	Blank	No
9721	Carrier Filed Premium Credit-Subject to Experience Rating	No	Yes	Blank	No
9722	Carrier Filed Premium Credit-Not Subject to Experience Rating	No	No	Blank	No
9723	Carrier Filed Premium Debit-Subject to Experience Rating	Yes	Yes	Blank	No
9724	Carrier Filed Premium Debit-Not Subject to Experience Rating	Yes	No	Blank	No
9740	Terrorism Insurance Program (Certified Acts of Terrorism) Premiums	Yes	No	Blank	No
9757	Audit Noncompliance Charge	Yes	No	Blank	No
9803	Employers Liability 100/100/1,000	Yes	Yes	Blank	No
9804	Employers Liability 100/100/2,500	Yes	Yes	Blank	No
9805	Employers Liability 100/100/5,000	Yes	Yes	Blank	No

Exhibit 4

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

**Effective:
Distributed:
PART III - DEFINITIONS**

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20. Short Rate Penalty Premium	x	x	x	x	x	0931
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c. No-Massachusetts Exposure			Must be zero			1111
d. Paid Furloughed Employees			Must be zero			0012
23. Deductible Reimbursements			Do Not Report			
24. Policyholder Dividends			Do Not Report			
25. DIA Assessment			Do Not Report			

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PART III - DEFINITIONS

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d. Paid Furloughed Employees

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d. Incidental Income

Any revenues received from finance charges, installment fees, check bouncing fees, reinstatement fees, or similar charges, related to Massachusetts workers' compensation policies, imposed on a policyholder by their insurance company.

e. Unreported Expenses

Expenses associated with the collection of incidental income for workers' compensation policies. Do not report any amount otherwise reported in any of the other expense category.

f. Uncollectible Premium Receivables

Any premium receivable that has been written off because the determination was made that it was uncollectible.

Note that this does not impact earned premiums or written premiums because uncollectible premium receivables are written off against other income.

g. Loss Adjustment Expenses

For aggregate financial reporting, loss adjustment expenses can be classified into two broad categories: Defense and Cost Containment (DCC) and Adjusting and Other (AO). **Loss adjustment expenses should be reported in accordance with the current NAIC definitions.**

i. Defense and Cost Containment (DCC)

DCC includes defense, litigation, and medical cost containment expenses, whether internal or external. DCC includes, but is not limited to, the following items:

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

**Effective:
Distributed:
Part VI – Appendices**

**Appendix II – Statistical Class Codes
Page 2**

Code	Phraseology	Premiums Assumed to be a Positive Value	Subject to Experience Mod.	How is the Exposure Expressed	Can Losses be Coded to this Class
7453	Non Ratable Element – Air Carrier – Commuter Flying Crew-NR	Yes	No	Payroll	No
9034	Rate Deviation – Not Subject to Experience Rating	No	No	Blank	No
9037	Rate Deviation – Subject to Experience Rating	No	Yes	Blank	No
9046	Construction Class Premium Adjustment	No	No	Blank	No
9129	Former Self-Insured Rating Plan Deposit	Yes	No	Blank	No
9136	Former Self-Insured Insurance Charge	Yes	No	Blank	No
9663	Large Deductible Adjustment-Not Subject to Experience Rating	No	No	Blank	No
9664	Deductible Adjustment-Subject to Experience Rating	No	Yes	Blank	No
9721	Carrier Filed Premium Credit-Subject to Experience Rating	No	Yes	Blank	No
9722	Carrier Filed Premium Credit-Not Subject to Experience Rating	No	No	Blank	No
9723	Carrier Filed Premium Debit-Subject to Experience Rating	Yes	Yes	Blank	No
9724	Carrier Filed Premium Debit-Not Subject to Experience Rating	Yes	No	Blank	No
9740	Terrorism Insurance Program (Certified Acts of Terrorism) Premiums	Yes	No	Blank	No
9803	Employers Liability 100/100/1,000	Yes	Yes	Blank	No
9804	Employers Liability 100/100/2,500	Yes	Yes	Blank	No
9805	Employers Liability 100/100/5,000	Yes	Yes	Blank	No

Exhibit 5

Audit Noncompliance Charge Endorsement

Part Five—Premium, Section G. (Audit) of the Workers Compensation and Employers Liability Insurance Policy is revised by adding the following:

If you do not allow us to examine and audit all of your records that relate to this policy, and/or do not provide audit information as requested, we may apply an Audit Noncompliance Charge. The method for determining the Audit Noncompliance Charge by state, where applicable, is shown in the Schedule below.

If you allow us to examine and audit all of your records after we have applied an Audit Noncompliance Charge, we will revise your premium in accordance with our manuals and Part 5—Premium, E. (Final Premium) of this policy.

Failure to cooperate with this policy provision may result in the cancellation of your insurance coverage, as specified under the policy.

Note:

For coverage under state approved workers compensation assigned risk plans, failure to cooperate with this policy provision may affect your eligibility for coverage.

Schedule

State(s)	Basis of Audit Noncompliance Charge	Maximum Audit Noncompliance Charge Multiplier
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This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

~~(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)~~

Endorsement Effective Insured

Policy No.

Endorsement No. Premium

Insurance Company

Countersigned by