

SUBCHAPTER G. Workers' Compensation Insurance
Division 4. Texas Detailed Claim Information Statistical Plan
28 TAC §5.6601

1. INTRODUCTION. The Texas Department of Insurance proposes new Division 4, §5.6601, concerning the Texas Detailed Claim Information Statistical Plan. The proposal would adopt by reference the *Texas Detailed Claim Information Statistical Plan, 2010 Edition* (Proposed Statistical Plan), effective September 1, 2010, for insurance companies writing workers' compensation insurance in Texas. The Proposed Statistical Plan specifies the detailed claim information (DCI) data that must be submitted to the Department or its statistical agent relating to workers' compensation and employers' liability claims. The Proposed Statistical Plan will not apply to employers certified to self-insure under the Labor Code Chapter 407, employers who participate in self-insurance groups under the Labor Code Chapter 407A, and governmental entities, because they are not insurance companies authorized to engage in the business of workers' compensation insurance under the Insurance Code Chapter 2051 or defined as insurance companies under the Insurance Code §2053.001(2).

The new section and the Proposed Statistical Plan are necessary to provide needed clarification regarding the reporting requirements of certain data fields, eliminate unnecessary and noncritical data elements, and add necessary data elements. The Insurance Code §2053.101 authorizes the Commissioner to establish a statistical plan and the Insurance Code §2053.151 requires that the statistical plan be established by rule. This proposal applies to workers' compensation insurance and includes

employers' liability insurance. Whenever the term "workers' compensation" is used in this proposal, the term includes and applies to employers' liability insurance.

Currently, insurance companies writing workers' compensation insurance in Texas must use the statistical plan adopted effective January 1, 1991, and last amended effective January 1, 1997 (Current Statistical Plan). The Current Statistical Plan was adopted under the procedures outlined in Article 5.96 of the Insurance Code. Subsequent changes in the industry, as well as the desire to more closely align the Texas DCI reporting requirements with the DCI reporting requirements of other states, create the need to update the Current Statistical Plan. Pursuant to the Insurance Code §2053.151, as amended by Senate Bill (SB) 471, 80th Legislature, Regular Session, effective September 1, 2007, the Department has determined that the update should be proposed and adopted by rule under the Administrative Procedure Act, Government Code Chapter 2001, rather than under the Insurance Code Article 5.96. The updated reporting requirements in the Proposed Statistical Plan shall apply to all claims with a Reported to Insurer Date of September 2010 and thereafter. All claims with a Reported to Insurer Date prior to September 2010 shall use the reporting requirements set out in the Current Statistical Plan, and those claims shall continue to be reported using the Current Statistical Plan up to and including reports due April, 2014.

The Proposed Statistical Plan has been designed to gather information to meet Texas-specific requirements. These requirements differ from those in other states, many of which use a DCI plan created by the National Council on Compensation Insurance, Inc. (NCCI). The NCCI DCI plan is also being updated at this time. The Proposed Statistical Plan is not required to be uniform with the NCCI DCI plan.

However, minimizing differences in the plans can promote efficiency for insurance companies that report in multiple states. The NCCI also serves as the Department's statistical agent for the collection of Texas DCI data. Thus, the Department has worked with the NCCI so that the Proposed Statistical Plan utilizes most of the same DCI data elements used by the NCCI plan and reduces the number of Texas-specific data elements from the Current Statistical Plan from sixteen to seven. Providing a more uniform collection of DCI data across states will allow Texas data to be more easily compared with similar data from other states for research purposes by the Department, the Department's designated statistical agent, and the industry in general.

Conforming DCI data collection across states will improve efficiency for workers' compensation insurance companies that operate in Texas and other NCCI DCI plan states. It will allow them to consolidate reporting efforts for those states, to more easily monitor their data submissions, and reduce the need for these insurance companies to maintain multiple systems for maintaining and reporting DCI data. This should result in lower compliance costs.

The Proposed Statistical Plan eliminates 28 unnecessary data elements required under the NCCI DCI plan and the Current Statistical Plan. Nine of these elements are specific to the Current Statistical Plan. Thirteen new data elements were added to both the Proposed Statistical Plan and the NCCI's DCI plan. A 14th data element was added to the NCCI DCI plan, but was not included in the Proposed Statistical Plan because it was not consistent with Texas statutory workers' compensation requirements. The 13 new data elements (none of which are Texas-specific) include (1) type of benefit covered by lump sum settlement - impairment income benefits only in Texas; (2)

extraordinary loss event indicator; (3) impairment percentage basis code; (4) loss conditions - type of claim, type of loss, type of recovery; (5) previous carrier code; (6) previous claim number; (7) previous policy effective date; (8) previous policy number; (9) previous reported to insurer date; (10) recovery reimbursement code; (11) replacement type code; (12) return to work rate of pay indicator; and (13) total paid medical amount. Additionally, both the NCCI DCI plan and Proposed Statistical Plan modify seven existing data elements, none of which are Texas specific, including: (1) benefit amount paid (excludes lump-sum settlements); (2) benefit type code (excludes lump-sum settlements); (3) birth year (excludes month and day); (4) hire year (excludes month and day); (5) lump-sum settlement amount (separated from benefit amount paid); (6) record type code (eliminated CIC and revision codes); and (7) report type (to valuation level code).

Further, the Proposed Statistical Plan will gather comprehensive data for all indemnity claims with a loss value greater than zero. This change is consistent with the NCCI's DCI plan. Under the Current Statistical Plan, only claims with incurred losses of \$5,000 or greater were required to be reported. This change will provide enhanced opportunities for research and monitoring of claims below \$5,000, as well as more accurate pricing of statutory and regulatory changes affecting those claims.

The seven Texas-specific data elements that are in the Current Statistical Plan and that remain in the Proposed Statistical Plan include: (1) Employer Federal Employer Identification Number (FEIN); (2) Employer Standard Industrial Classification (SIC) code; (3) Employee Social Security Number (SSN); (4) Hospital Costs Amount Paid; (5) Total Payments to Physicians; (6) Date of First Payment; and (7) Zip Code of

Injury Site. The Department determined that collecting employee SSN and employer FEIN data elements are essential to link the DCI data to other Division of Workers' Compensation claims data, which enhances the usability of DCI data for research and compliance tracking purposes. Likewise, it is essential to keep certain fields for research purposes, including analyzing claims by industry (employer SIC code) and geographic region (Zip code of injury site). Additionally, the Department determined the Proposed Statistical Plan should continue to collect hospital and physician payments broken out for each claim valuation level in the Proposed Statistical Plan, because similar data for these claims by valuation level is not available from other data sources. Further, the Department has determined that collection of the Date of First Payment provides necessary information to the Division of Workers' Compensation for certain benefit types. This data is useful for compliance monitoring and/or for conducting the performance based oversight reviews the Division of Workers' compensation is required to conduct for insurance companies.

Additionally, the proposal clarifies that the Texas uniform insurance policy prescribed by the Commissioner under the Insurance Code §2052.002 provides both workers' compensation insurance coverage and employers' liability insurance coverage. Reporting requirements for both coverages are addressed in the Proposed Statistical Plan.

Finally, because the type and nature of workers' compensation insurance losses are not related to the volume of claims processed by an insurance company, the Proposed Statistical Plan applies to all insurance companies. The proposal does not reduce or eliminate the Proposed Statistical Plan reporting requirement for insurance

companies whose workers' compensation business falls below a specific minimum premium volume. Such an exclusion or exemption from reporting under the Proposed Statistical Plan could result in a distortion of the DCI data, which would minimize its usefulness for research and/or compliance monitoring purposes. The Current Statistical Plan covers all insurance companies writing workers compensation insurance in Texas. The Proposed Statistical Plan will continue to apply to the same insurance companies that are currently reporting DCI data under the Current Statistical Plan. The Proposed Statistical Plan reporting requirements do not apply to employers certified to self-insure under the Labor Code Chapter 407, employers who participate in self-insurance groups under the Labor Code Chapter 407A, and governmental entities, because they are not authorized to engage in the business of workers' compensation insurance under the Insurance Code Chapter 2051 or defined as insurance companies under the Insurance Code §2053.001(2).

The proposed new section functions as follows. Proposed §5.6601(a) sets forth the applicability of the proposed new section. Proposed §5.6601(a)(1) provides that the proposed section applies to workers' compensation insurance and includes employers' liability insurance. It further provides that whenever the term "workers' compensation" is used in the proposed section, the term includes and applies to employers' liability insurance. Proposed §5.6601(a)(2) provides that the proposed section applies to each insurance company authorized to write workers' compensation insurance in the State of Texas as that term is defined in the Insurance Code §2053.001(2). Proposed §5.6601(a)(2) further specifies that each insurance company is required to report to the Commissioner, or the Commissioner's designated statistical agent, information

prescribed by the Commissioner under the Insurance Code §2053.151 for each workers' compensation insurance claim.

Proposed §5.6601(b) sets forth the purpose of the new section. Proposed §5.6601(b)(1) specifies that the purpose of the section is to prescribe the reporting requirements for the information and data to be submitted to the Commissioner, or the Commissioner's designated statistical agent, concerning workers' compensation claims pursuant to the Insurance Code §2053.151 to ensure that the data collection methodology will yield data necessary for research and medical cost containment efforts. Though employers' liability claims and coverage are not specifically mentioned in §2053.151 of the Insurance Code, employers' liability coverage is part of the workers' compensation policy prescribed by the Commissioner, and must be included in the DCI Statistical Plan reporting requirements. Proposed §5.6601(b)(2) specifies that the purpose of the section is also to adopt by reference the *Texas Detailed Claim Information Statistical Plan, 2010 Edition*.

Proposed §5.6601(c) provides definitions for the purposes of the section and the Statistical Plan. Proposed §5.6601(c)(1) provides that "centrally located" means located in a place with ready access to the insurance company's claims files and detailed claims information. Proposed §5.6601(c)(2) provides that the terms "insurance company, insurance carrier, insurer, and carrier" have the same meaning as the term "insurance company" which is defined in the Insurance Code §2053.001(2). Proposed §5.6601(c)(3) provides that "Jurisdiction State" means the state responsible for the claim. Proposed §5.6601(c)(4) provides that the term "Statistical Plan" means the

Texas Detailed Claim Information Statistical Plan, 2010 Edition adopted by reference pursuant to the proposed section.

Under proposed §5.6601(d), the *Texas Detailed Claim Information Statistical Plan, 2010 Edition* is adopted by the Commissioner by reference, effective September 1, 2010. Proposed §5.6601(d) specifies that the Proposed Statistical Plan includes the rules, requirements, and examples for reporting detailed claim information for claims with a Reported to Insurer Date of September 1, 2010 and later and provides reporting instructions, a data dictionary, and claim selection and sampling methodologies.

Proposed §5.6601(e) provides that the Proposed Statistical Plan is published by the Department and is available from the Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or the Department's website at www.tdi.state.tx.us.

Proposed §5.6601(f) sets out the reporting requirements. Proposed §5.6601(f)(1) provides that the Proposed Statistical Plan specifies the requirements for reporting claims data, including (i) criteria for determining which claims to report; (ii) data elements and record layouts for the information that must be reported on each claim; (iii) standards and procedures for categorizing insurance and medical benefits required to be reported on each claim; (iv) information to be used for determining the specific loss valuation levels for each claim, which requires it to be reported; and (v) instructions regarding how and when to report required data on claims.

Proposed §5.6601(f)(2) requires each insurance company to comply with the reporting requirements of the Proposed Statistical Plan pursuant to the Insurance Code §2053.151. Proposed §5.6601(f)(2) further requires each insurance company to submit

required information and data on each claim to the Commissioner, or the Commissioner's designated statistical agent, no later than three months after the loss valuation dates specified in the Proposed Statistical Plan.

Proposed §5.6601(g) sets out which claims are required to be reported. It specifies that a claim's eligibility for reporting is based on an incurred indemnity loss value greater than zero. It further specifies that even if no income benefit payments have been made, but reserves have been set on the claim in anticipation of payment, the claim is still eligible to be reported. Proposed §5.6601(f) requires the following claims to be reported: (i) death claims; (ii) lifetime income benefit claims (i.e., permanent total disability claims); (iii) other open indemnity claims; and (iv) closed claims selected in accordance with the sampling method outlined in the Proposed Statistical Plan adopted under the proposed section.

Proposed §5.6601(h) sets out which claims are excluded from reporting. It specifies that the following claims are not required to be reported: (i) claims where the jurisdiction state is not Texas; (ii) claims in which income benefits have not yet accrued or been paid (i.e., medical only claims); (iii) losses paid to another insurance company because of reinsurance assumed by the reporting insurance company; and (iv) claims that involve benefits payable under federal workers' compensation laws.

Proposed §5.6601(i) mandates that each insurance company must designate one individual as the carrier coordinator for claims reporting within its organization and provide the coordinator's contact information, including the coordinator's name, working title, mailing address, e-mail address, and telephone number, to the Commissioner, or the Commissioner's designated statistical agent. Proposed §5.6601(i)(1) requires that

the designated carrier coordinator must: (i) be a centrally-located employee of the insurance company who has responsibility for claims, statistical, or data management; (ii) receive and appropriately disperse data reporting information received from the Commissioner, or the Commissioner's designated statistical agent; and (iii) serve as central compliance control for data reporting under the Proposed Statistical Plan.

Proposed §5.6601(i)(2) further requires that an insurance company authorized to write workers' compensation insurance in this state as of the effective date of §5.6601 must provide the coordinator's contact information required by subsection §5.6601(i) to the Commissioner, or the Commissioner's designated statistical agent, no later than September 1, 2010. Proposed §5.6601(i)(2) also provides that, except as otherwise provided by §5.6601(i), an insurance company that obtains a certificate of authority to write workers' compensation insurance in this state after September 1, 2010, must provide the coordinator's contact information required by §5.6601(i) to the Commissioner, or the Commissioner's designated statistical agent, no later than the 30th day after the insurance company's certificate of authority becomes effective.

Proposed §5.6601(i)(3) mandates that an insurance company must report any changes to the designated carrier coordinator's contact information to the Commissioner, or the Commissioner's designated statistical agent, not later than 30 days after the effective date of the change.

Proposed §5.6601(j) sets forth the effective dates of the section and Statistical Plan. Proposed §5.6601(j)(1) provides that the section is effective on September 1, 2010. Proposed §5.6601(j)(2) mandates that claims with a Reported to Insurer Date of September 1, 2010, and later must be reported in accordance with the Statistical Plan.

It further mandates that claims with a Reported to Insurer Date prior to September 1, 2010, must be reported in accordance with the Current Statistical Plan (Texas Detailed Claim Information Statistical Plan, effective January 1, 1997).

The Proposed Statistical Plan and Current Statistical Plan have been submitted to the Secretary of State with this proposal filing and are also available from the Department website at www.tdi.state.tx.us or the Department's Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

2. FISCAL NOTE. Gary Gola, Director of Data Services for the Property and Casualty Program, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Gola also has determined that for each year of the first five years the proposed sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal.

The anticipated public benefit will be an updated statistical plan that clarifies terminology, improves ease of operation, and requires less programming to convert coding. These improvements will ultimately result in lower operating costs for insurance companies. Further, clarifying that the workers' compensation policy incorporates

employers' liability insurance, and including employers' liability insurance in the rule and Proposed Statistical Plan will reduce confusion and improve efficiency in processing DCI data information submitted pursuant to the Proposed Statistical Plan. The Proposed Statistical Plan is also expected to ensure that the Department will continue to be able to fulfill its statutory functions and that the collection methodology will yield data necessary for research and medical cost containment efforts. Each of these benefits should reduce operating costs for insurers, while maintaining an effective workers' compensation system for injured employees as well as other system participants.

Additionally, for insurance companies writing workers' compensation insurance in Texas and other states using the NCCI DCI plan, the proposal provides for the more uniform collection, compilation, and analysis of DCI data among the states. Texas data will be more easily compared with similar data from other states, improving research utility for the Department, the designated statistical agent, and the industry in general.

Analysis of Potential Costs for Persons Required to Comply with the Proposal

The proposal and Proposed Statistical Plan requires insurance companies to use: (i) the Current Statistical Plan through April 2014 on claims with a Reported to Insurer Date prior to September 2010; and (ii) the Proposed Statistical Plan reporting requirements for claims with a Reported to Insurer Date of September 2010, and thereafter.

The proposed requirement for insurance companies to use the Current Statistical Plan for reporting all claims with a Reported to Insurer Date prior to September 2010 up to and including reports due April, 2014, is not a cost imposed by this proposal because this requirement exists under the Current Statistical Plan. Similarly, the Proposed

Statistical Plan incorporates some reporting requirements from the Current Statistical Plan. These reporting requirements are not costs imposed by this proposal. These reporting requirements exist under the Current Statistical Plan and do not change simply by including them in the Texas Administrative Code.

Rather, the costs associated with this proposal and the Proposed Statistical Plan arise from the new requirements and revisions to the Current Statistical Plan reporting requirements for claims with a Reported to Insurer Date of September 2010, and thereafter. The costs associated with the reporting requirements in the Proposed Statistical Plan will vary based size of the insurance company, whether the insurance company writes in NCCI states, the number of claims each insurance company has with an incurred indemnity loss value greater than zero, and whether the insurance company utilizes contracted vendors to report the required data or reports the required data in-house.

This analysis considers the cost of an insurance company to implement the Proposed Statistical Plan in-house, because it is ultimately the insurance company is responsible for the reporting of DCI data and the in-house reporting method is available to every insurance company. This method is not required by the proposal and other methods of compliance may be available to the insurance company. The method of compliance and ultimate cost of compliance is a business decision of the insurance company and not a requirement of this proposal.

Insurance companies writing only in Texas currently maintain one reporting system for reporting workers' compensation DCI data to the Department's designated statistical agent. Insurance companies writing in Texas and other states currently

maintain multiple reporting systems for DCI data - one for Texas and one or more for the other state(s). The Department has determined that the potential costs of compliance with the Proposed Statistical Plan will be associated with updating the reporting requirements in the insurance company's current DCI reporting system. While the intent of this proposal is to create a system that provides for a more uniform collection, compilation, and analysis of DCI data among the states, the final decision on how to comply with this proposal is a business decision for the insurance company.

The types of additional insurance company costs related to this implementing these revisions will be primarily computer programming and other information technology services. These costs will vary by insurance company and will depend on each insurance company's existing data systems, existing staff, the number of Texas workers' compensation claims with an incurred indemnity loss value greater than zero, and the type of data already captured for each claim required to be reported under proposed §5.6601. Though each insurance company has the information needed to estimate its individual costs, the Department estimates that to analyze and consolidate an insurance company's current data systems, the insurance company may incur costs related to information technology services, including the services of programmers, software engineers, database managers, and computer support staff. While it is not feasible to determine the actual cost of such employees and the actual amount of time that will be needed for such employees for each insurance company, the Texas Workforce Commission's Labor Market & Career Information Department's *2008 Texas Statewide Wages, Occupational Employment Statistics Program* indicates that the average hourly wages for these professions are \$37.28 for a computer programmer,

\$42.98 for a computer software applications engineer, \$43.50 for computer software systems engineers, \$32.99 for a database administrator, and \$21.60 for computer support staff. However, the actual number, types, and cost of personnel will be determined by the insurance company's existing data systems and staffing.

Additionally, five insurance companies, including four insurance companies that write workers' compensation insurance in NCCI states and Texas and one insurance company exclusively writing in Texas, provided the Department and the Department's statistical agent with their anticipated costs in complying with this proposal. While actual cost for each insurance company may differ, these costs may be reflective of the overall costs that might be incurred by insurance companies to comply with the Proposed Statistical Plan.

Insurance Companies Using the Updated NCCI DCI Plan. Insurance companies writing in Texas and other states using the updated NCCI DCI plan will be required to implement both the Proposed Statistical Plan and the updated NCCI DCI plan for those states. Costs associated with implementing the NCCI DCI plan are not a result of this proposal. However, implementing both the NCCI DCI plan and the Proposed Statistical Plan may result in some efficiency because the additional costs would extend to incorporating the revised requirements and the revised Texas-specific requirements. Additional information technology services cost estimates of between \$28,800 and \$57,600 per insurance company were provided as being necessary for these insurance companies to comply with Proposed Statistical Plan.

Insurance Companies Not Using the NCCI DCI Plan. Insurance companies writing workers' compensation exclusively in Texas and/or other states that do not use

the NCCI DCI plan will be required to update their systems to meet the Proposed Statistical Plan. Because these companies will not have prior NCCI DCI reporting requirements, implementing the Proposed Statistical Plan will require a more complete system build, rather than a modification of an existing system. A Texas-only insurance company provided the Department with an estimate that additional information technology services costs of between \$75,000 and \$100,000 would be necessary to comply with the Proposed Statistical Plan.

Insurance Companies Using Vendors. Many insurance companies writing workers' compensation insurance in Texas and/or other states may only need to make minor modifications to their systems to comply with the Proposed Statistical Plan because these insurance companies currently outsource some portion of their reporting requirements to contracted vendors, who may report DCI data on behalf of multiple insurance companies. As such, to the extent that insurance companies utilize vendors to report this data and these vendors make the necessary programming changes on behalf of all of their contracted insurance company clients, compliance costs associated with the Proposed Statistical Plan will be minimized significantly. The Department's statistical agent estimates that to comply with Proposed Statistical Plan these insurance companies might still be expected to incur necessary in-house information technology services cost of between \$4,000 and \$6,000 per insurance company.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses,

state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines “micro business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

The Current Statistical Plan Reporting Requirements. In accordance with the Government Code §2006.002(c), the Department has determined that the proposed incorporation of the Current Statistical Plan reporting requirements into the Proposed Statistical Plan will not have an adverse economic effect on small or micro businesses that are required to comply with the proposal. Additionally, the Department has determined that the requirement for insurance companies to use the Current Statistical Plan for reporting all claims with a Reported to Insurer Date prior to September 2010 up to and including reports due April, 2014, will not have an adverse economic effect on small or micro businesses that are required to comply with the proposal. As explained in the Public Benefits/Cost Note part of this proposal, these proposed amendments do

not impose any additional requirements or costs to those in the Current Statistical Plan with which insurance companies, regardless of size, must comply. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis for these requirements.

Proposed Statistical Plan Revisions. The Proposed Statistical Plan may have an adverse economic impact on insurance companies that qualify as small or micro businesses under the Government Code §2006.001(1) and (2) and that are required to comply with the proposal. The adverse economic impact of the proposal anticipated by the Department on these insurance companies is the additional costs associated with complying with the changes from the Current Statistical Plan to the Proposed Statistical Plan. The types of costs related to the proposal will be primarily computer programming and other information technology services. The Department's cost analysis in the Public Benefit/Cost Note portion of this proposal is equally applicable to those insurance companies that qualify as small or micro businesses under the Government Code §2006.001(1) and (2). As previously indicated, the total actual costs for each insurance company, regardless of size, will vary depending on each insurance company's existing data systems, existing staff, the number of workers' compensation insurance policies or employers' liability claims with an incurred indemnity loss value greater than zero, and the type of data already captured.

In accordance with the Government Code §2006.002(c-1), the Department has considered other regulatory methods to accomplish the objectives of the proposal and the statute that is being implemented that will also minimize any adverse impact on the insurance companies that qualify as small or micro businesses.

The Insurance Code §2053.051 authorizes the Commissioner to develop and periodically modify reasonable statistical plans for workers' compensation insurance to be used by each insurance company in recording and reporting the insurance company's loss experience and other data required by the Department. Section 2053.151(a) requires the Commissioner to prescribe by rule the information that must be reported on each workers' compensation claim. Section 2053.151(b) requires the Commissioner to establish standards and procedures for categorizing insurance and medical benefits required to be reported on each workers' compensation claim to ensure that the data collection methodology will yield data necessary for research and medical cost containment efforts. Section 2053.151(c) further requires the Commissioner to establish by rule reporting requirements for insurance companies regarding workers' compensation claims. Section 2053.151(c) provides that the Commissioner may reduce or eliminate reporting requirements for insurance companies whose workers' compensation insurance business falls below a specific minimum premium volume established by the Commissioner by rule. The objective of the revisions proposed in the Proposed Statistical Plan is to establish a standardized method of collecting workers' compensation DCI data by utilizing the fields and codes used for reporting such data in other states, unless other information is necessary to fulfill the Department's business requirements.

The other regulatory methods considered by the Department to accomplish the objectives of the proposal and to minimize any adverse impact on workers' compensation insurance companies that qualify as small or micro businesses under the Government Code §2006.001(1) and (2) are: (i) not adopting the Proposed Statistical

Plan and (ii) implementing different requirements or standards for the workers' compensation insurance companies that qualify as small or micro businesses.

Not adopting the Proposed Statistical Plan. If the proposed revisions set forth in the Proposed Statistical Plan were not adopted, insurance companies, regardless of size, would still be required to submit DCI data pursuant to the Current Statistical Plan, which was adopted in 1997. The insurance companies would be required to utilize some fields and codes that would be inconsistent from those used in other states. This would result in some insurance companies being required to continue to maintain two or more separate systems for tracking premium and loss experience data – one for Texas and one or more for the rest of the country. This could result in higher compliance costs for these insurance companies. Not adopting the revised fields and codes could also hinder accurate and meaningful comparison of Texas DCI data with similar data from other states for research purposes by the Department, the designated statistical agent, and the industry in general. The Department interprets the purpose of the Insurance Code §2053.051 is to ensure the collection of accurate and meaningful Texas workers' compensation insurance data as needed for regulatory purposes. This includes data from insurance companies that are small or micro businesses. The Department, therefore, has rejected the approach of not adopting the Proposed Statistical Plan amendments because the Department does not believe that it would accomplish the objective of Insurance Code §2053.051 and, therefore, would not be consistent with legislative intent.

Implementing different requirements or standards for workers' compensation insurance companies that qualify as small and micro businesses. Another regulatory

alternative considered by the Department was implementing different requirements or standards for workers' compensation insurance companies that qualify as small or micro businesses under the Government Code §2006.001(1) and (2). While this approach would quite possibly not result in an adverse economic impact on small or micro insurance companies, it would hinder the ability of the Department to collect consistent and meaningful DCI data for the workers' compensation industry in Texas. It could also hinder accurate and meaningful comparison of Texas DCI data with similar data from other states for research purposes by the Department, the designated statistical agent, and the industry in general. Because the type and nature of workers' compensation insurance losses are not related to the size of the insurance company, the DCI data gathered from insurance companies that may qualify as small or micro businesses is considered by the Department to be statistically significant. Therefore, the exemption of the small or micro insurance companies from the Proposed Statistical Plan could result in a distortion of the DCI data. The Department, therefore, has rejected this approach as a viable regulatory alternative.

5. TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June, 1, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Gary Gola, Director, Data Services, Property and Casualty Program, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The new section and Proposed Statistical Plan are proposed pursuant to the Insurance Code §§2053.001, 2053.101, 2053.151, and 36.001. Section 2053.001(2) defines “insurance company” as a person authorized to engage in the business of workers’ compensation insurance in this state, including: (A) the Texas Mutual Insurance Company; (B) a Lloyd's plan under Chapter 941; and (C) a reciprocal and interinsurance exchange under Chapter 942. Section 2053.101 authorizes the Commissioner to develop and periodically modify reasonable statistical plans for workers' compensation insurance to be used by each insurance company in recording and reporting the insurance company's loss experience and other data required by the Department. Section 2053.151(a) requires the Commissioner to prescribe by rule the information that must be reported on each workers' compensation claim. Section 2053.151(b) requires the Commissioner to establish standards and

procedures for categorizing insurance and medical benefits required to be reported on each workers' compensation claim to ensure that the data collection methodology will yield data necessary for research and medical cost containment efforts. Section 2053.151(c) further requires the Commissioner to establish by rule reporting requirements for insurance companies regarding workers' compensation claims. Section 2053.151(c) also provides that the Commissioner may reduce or eliminate reporting requirements for insurance companies whose workers' compensation insurance business falls below a specific minimum premium volume established by the Commissioner by rule. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§5.6601	Insurance Code §§2053.001, 2053.101 and 2053.151

9. TEXT.

§5.6601. Texas Detailed Claim Information Statistical Plan.

(a) Applicability.

(1) This section applies to workers' compensation insurance and includes employers' liability insurance. Whenever the term "workers' compensation" is used in this section, the term includes and applies to employers' liability insurance.

(2) This section applies to each insurance company authorized to write workers' compensation insurance in the State of Texas as specified in the Insurance Code §2053.001(2). Each insurance company is required to report to the commissioner, or the commissioner's designated statistical agent, information prescribed by the commissioner under the Insurance Code §2053.151 for each workers' compensation insurance claim.

(b) Purpose. The purpose of this section is to:

(1) prescribe the reporting requirements for the information and data to be submitted to the commissioner, or the commissioner's designated statistical agent, concerning workers' compensation claims pursuant to the Insurance Code §2053.151 to ensure that the data collection methodology will yield data necessary for research and medical cost containment efforts; and

(2) adopt by reference the *Texas Detailed Claim Information Statistical Plan, 2010 Edition*.

(c) Definitions. The following words and terms when used in this division shall have the following meanings unless the context clearly indicates otherwise:

(1) Centrally-located--located in a place with ready access to the insurance company's claims files and detailed claims information.

(2) Insurance company, insurance carrier, insurer, and carrier--has the same meaning as "Insurance company" as defined by the Insurance Code §2053.001(2).

(3) Jurisdiction state--the state responsible for the claim.

(4) Statistical Plan--the *Texas Detailed Claim Information Statistical Plan, 2010 Edition* adopted by reference pursuant to this section.

(d) Adoption by Reference. The commissioner adopts by reference the *Texas Detailed Claim Information Statistical Plan, 2010 Edition*. The Statistical Plan includes the rules, requirements, and examples for reporting detailed claim information for claims with a Reported to Insurer Date of September 1, 2010 and later and provides reporting instructions, a data dictionary, and claim selection and sampling methodologies.

(e) Statistical Plan Availability. The Statistical Plan is published by the Texas Department of Insurance and is available from the Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or the department's website at www.tdi.state.tx.us.

(f) Reporting Requirements.

(1) The Statistical Plan specifies the requirements for reporting claims data, including:

(A) criteria for determining which claims to report;

(B) data elements and record layouts for the information that must be reported on each claim;

(C) standards and procedures for categorizing insurance and medical benefits required to be reported on each claim;

(D) information to be used for determining the specific loss valuation levels for each claim, which requires it to be reported; and

(E) instructions regarding how and when to report required data on claims.

(2) Each insurance company is required to comply with the reporting requirements of the Statistical Plan pursuant to the Insurance Code §2053.151. Each insurance company must submit required information and data on each claim to the commissioner, or the commissioner's designated statistical agent, no later than three months after the loss valuation dates specified in the Statistical Plan.

(g) Claims Required to be Reported. A claim's eligibility for reporting is based on an incurred indemnity loss value greater than zero. Even if no income benefit payments have been made, but reserves have been set on the claim in anticipation of payment, the claim is still eligible to be reported. The following claims must be reported:

(1) death claims;

(2) lifetime income benefit claims (i.e., permanent total disability claims);

(3) other open indemnity claims; and

(4) closed claims selected in accordance with the sampling method outlined in the Statistical Plan adopted under this section.

(h) Claims Excluded from Reporting. The following claims are not required to be reported:

(1) claims where the jurisdiction state is not Texas;

(2) claims in which income benefits have not yet accrued or been paid (i.e., medical only claims);

(3) losses paid to another insurance company because of reinsurance assumed by the reporting insurance company; and

(4) claims that involve benefits payable under federal workers' compensation laws.

(i) Designated Carrier Coordinator. Each insurance company must designate one individual as the coordinator for claims reporting within its organization and provide the coordinator's contact information, including the coordinator's name, working title, mailing address, e-mail address, and telephone number, to the commissioner, or the commissioner's designated statistical agent.

(1) The designated carrier coordinator must:

(A) be a centrally-located employee of the insurance company who has responsibility for claims, statistical, or data management;

(B) receive and appropriately disperse data reporting information received from the commissioner, or the commissioner's designated statistical agent; and

(C) serve as central compliance control for data reporting under the Statistical Plan.

(2) An insurance company authorized to write workers' compensation insurance in this state as of the effective date of this section must provide the coordinator's contact information required by this subsection to the commissioner, or the commissioner's designated statistical agent, no later than September 1, 2010. Except as otherwise provided by this subsection, an insurance company that obtains a certificate of authority to write workers' compensation insurance in this state after

September 1, 2010, must provide the coordinator's contact information required by this subsection to the commissioner, or the commissioner's designated statistical agent, no later than the 30th day after the insurance company's certificate of authority becomes effective.

(3) An insurance company must report any changes to the designated insurance company coordinator's contact information to the commissioner, or the commissioner's designated statistical agent, not later than 30 days after the effective date of the change.

(i) Effective Date.

(1) This section is effective on September 1, 2010.

(2) Claims with a Reported to Insurer Date of September 1, 2010 and later must be reported in accordance with the Statistical Plan. Claims with a Reported to Insurer Date prior to September 1, 2010 must be reported in accordance with the Texas Detailed Claim Information Statistical Plan effective January 1, 1997 up to and including reports due April, 2014.