

TEXAS DEPARTMENT OF INSURANCE
EXEMPT FILING NOTIFICATION UNDER TEXAS INSURANCE CODE
CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96
AND NOTICE OF HEARING - RESCHEDULED

The commissioner of insurance has scheduled a hearing under Docket No. 2762 at 10 a.m., Central time, on February 18, 2014, in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street, Austin, Texas, to take action on the TDI staff petition, No. W-1213-01-I, filed on December 30, 2013. This hearing will substitute for the hearing that was originally scheduled for Petition No. W-1213-01-I (January 24, 2014), which was canceled due to inclement weather.

If you wish to comment on the petition and exhibits, please submit two copies of your comments to TDI by February 18, 2014. Send one copy to the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas, 78714-9104. Send the other copy to Nancy Moore, Team Lead, Workers' Compensation Classification and Premium Calculation, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104. You may also present comments at the hearing.

The petition requests that the commissioner adopt the *National Council on Compensation Insurance (NCCI) Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, to allow NCCI to assume certain workers' compensation functions in Texas, for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014.

NCCI is the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation. It is a licensed advisory organization in Texas, and is Texas' workers' compensation statistical agent. As of December 2013, there are 34 states plus the District of Columbia that are "NCCI states," which means that NCCI administers certain workers' compensation functions in those states, 11 independent states, including Texas, and four monopolistic states. If Texas becomes an NCCI state, policyholders operating in other NCCI states and carriers writing workers' compensation coverage in multiple NCCI states would have more consistent rules.

Carriers would pay additional fees to NCCI for subscribing to NCCI services in Texas. For the top four national workers' compensation carriers, the current cost range for NCCI services is 11 to 18 cents per \$100 of direct written premium. However, the additional fees may be offset by the reduction in the maintenance taxes for workers' compensation that are payable and due to the Comptroller of Public Accounts on March 1, 2014. NCCI has developed a transition plan through 2015 allowing discounts for additional Texas services.

Agents would pay an annual \$50 fee to access the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. NCCI will offer free access to agents to the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, until June 1, 2015.

Adopting the cited NCCI manuals and exceptions would allow NCCI to operate in Texas by: 1) drafting new or revised manual rules and forms; 2) filing the rules and forms with the Texas Department of Insurance for acceptance as submitted, acceptance with changes, or rejection; 3) assigning classification codes to businesses upon request; and 4) responding to telephone and written inquiries regarding workers' compensation classification and premium calculation.

The *NCCI Basic Manual* and the Texas exceptions incorporate the Texas classifications currently in effect; so as a result of this rule, the current Texas classifications would remain in effect, and would not change to the national classifications used in most NCCI states.

The Texas exceptions include a more formal dispute resolution process than TDI's current process, for disputes about rules or classifications that cannot be resolved between the policyholders and carriers.

The Texas exceptions update the premium discount table that is currently available for carriers to use for policyholders who meet the eligibility requirements. They also include updated percentages and minimum premiums for increased limits for employers' liability coverage if a policyholder elects employers' liability limits above the standard limits. The updated percentages are based on NCCI's actuarial analysis of more recent historical loss experience,

which results in percentages that more closely reflect what the additional premium should be for optional increased limits for employers' liability coverage.

The Texas exceptions replace the aggregate deductible and the per accident/aggregate deductible options with the per claim deductible and the medical-only deductible options to eliminate two options that are rarely chosen for Texas workers' compensation policies and add two other options that are used in other NCCI states. The Texas exception pages do not include tables for the premium credits for the per accident, per claim, and medical-only deductible options. Instead, the Texas exception pages direct carriers to use loss elimination ratios (LERs) to calculate premium credits for those deductible options. Many carriers that operate in Texas already use LERs to calculate their premium credits in other states. As part of its transition plan, NCCI will provide information to carriers and respond to inquiries on LERs.

With the adoption of the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, staff proposes to adopt 62 endorsements and forms, most of which already exist in the *Texas Basic Manual*, and two of which are new to Texas, but that clarify and standardize practices that are already common in Texas.

With this petition, staff proposes that policies with an effective date on or after 12:01 a.m., June 1, 2014, will use the rules, classifications, endorsements, and forms contained in the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. The *Texas Experience Rating Plan* contained in the *Texas Basic Manual* will continue in effect until TDI adopts the *NCCI Experience Rating Plan* with Texas exceptions. Staff proposes that the commissioner consider any proposed revisions to NCCI's manuals under either the procedure established in Insurance Code Article 5.96 or under an alternate procedure that also incorporates notice and opportunity for comment.

If Texas becomes an NCCI state, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements, such as: 1) prescribing standard policy forms and a uniform policy; 2) approving non-standard forms and endorsements; 3) determining hazards by classifications; 4) requiring carriers to use the classifications determined for Texas; 5) establishing classification relativities; 6) adopting a uniform experience rating plan; and 7) developing and updating statistical plans, as necessary.

In order for Texas to become an NCCI state for workers' compensation purposes, TDI must adopt the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. The Texas exceptions to the NCCI rules and forms are necessary to preserve the rules that are unique to Texas and to make the transition to an NCCI state as seamless as possible for policyholders.

Insurance Code Article 5.96 and §§2051.002, 2051.201, 2052.002, 2053.051, and 2053.052 authorize staff to file this petition and the commissioner to take the requested action. Article 5.96(a) authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classifications plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance. Article 5.96(b) allows any interested person to initiate proceedings with respect to any matter specified in section (a) by filing a written petition with the chief clerk.

Section 2051.002 requires that Insurance Code Chapter 2051, 251 (as it relates to workers' compensation insurance), 255, 426, 2052, 2053, and 2055 be construed and apply independently of any other law that relates to insurance rates and forms or prescribes the duties of the commissioner or TDI.

Section 2051.201 allows the commissioner to adopt and enforce all reasonable rules as are necessary to carry out the provisions of a law referenced in §2051.002(1), (2), (3), (4), or (5).

Section 2052.002 requires the commissioner to prescribe standard policy forms and a uniform policy for workers' compensation insurance.

Section 2053.051 requires TDI to determine hazards by class, establish classification relativities, and revise the classification system at least once every five years.

Section 2053.052 requires the commissioner to adopt a uniform experience rating plan for workers' compensation insurance and revise it at least once every five years. It also requires the commissioner to adopt reasonable rules and plans requiring the interchange of loss experience necessary for the application of the rating plan.

You may review a copy of the petition on the TDI website at www.tdi.texas.gov/rules/2013/exrules.html or they may review a copy of the petition and exhibits in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. For further information or to request copies of the petition and exhibits, please contact the Office of the Chief Clerk by email at ChiefClerk@tdi.texas.gov or by phone at 512-463-6327 (Reference No. W-1213-01-I).

TDI publishes this notification under Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

Issued in Austin, Texas on January 29, 2014.



Sara Waitt, General Counsel
Texas Department of Insurance