

No. **2016-4805**

**Official Order
of the
Texas Commissioner of Insurance**

Date: November 22, 2016

Subject Considered:

**Amendments to the
National Council on Compensation Insurance Manual
NCCI Filing *Item B-1432***

The commissioner of insurance considered amendments to the National Council on Compensation Insurance *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*, and *Forms Manual for Workers Compensation and Employers Liability Insurance (Forms Manual)* proposed in *Item B-1432—Establishment of Basic Manual Appendix G—Dispute Resolution Process* (TDI ECase No. 11294; SERFF Tracking Nos. NCCI-130589142 and NCCI-130588705; June 3, 2016).

After considering the filing, the commissioner adopts the following findings of fact and conclusions of law.

Findings of Fact

1. NCCI filed *Item B-1432* on June 3, 2016, using the procedure adopted in Commissioner's Order No. 3142 for revisions to NCCI's workers compensation manuals.
2. *Item B-1432* is a national filing to replace state-specific miscellaneous rules for the NCCI dispute resolution process with NCCI's national rule.
3. Policyholders use NCCI's dispute resolution process to resolve disputes about how a carrier applies workers compensation rating system rules, including classifications and experience rating modifications. *Item B-1432* creates new Appendix G to consolidate rules for NCCI's dispute resolution process in one place and to make the dispute resolution process rules more consistent between states.
4. For Texas, *Item B-1432*:
 - a. replaces the Texas-specific rule for NCCI's dispute resolution process with the national rule;
 - b. amends the Texas Amendatory Endorsement to update references to and terminology for the dispute resolution process;

- c. amends the Texas Amendatory Endorsement to allow only the policyholder—instead of any party to the dispute—to appeal an NCCI appeals board decision on a dispute to TDI;
 - d. incorporates Texas-specific requirements in a table format in Appendix G, including the existing five-member voting board; and
 - e. eliminates the requirement that the five members must come from specified constituencies (carrier, agent, public).
5. *Item B-1432* also contains a number of minor additions and changes to terminology to clarify the dispute resolution process.
 6. The TDI chief clerk has had copies of the full text of the filing and related exhibits since the filing date. The filing and exhibits are incorporated by reference into this order.
 7. The changes in *Item B-1432* apply to disputes that are pending with or received by NCCI on and after July 1, 2017.
 8. On July 29, 2016, TDI published notice of the filing on the TDI website at www.tdi.texas.gov/rules/2016/nccimanual.html, and distributed notice of the filing to electronic news subscribers.
 9. TDI received one comment on the filing by the September 2, 2016, deadline, and no hearing requests.
 10. The commenter generally supported the changes in *Item B-1432*.
 11. The commenter was opposed to eliminating a carrier's right to appeal a decision of the appeals board to TDI.
 12. A carrier selects the classification codes based on the applicable manual rules. The carrier determines the classification code for the policy unilaterally, and the policyholder must either accept the carrier's determination or bring a dispute through the NCCI dispute resolution process.
 13. The dispute resolution process is the policyholder's sole remedy if the policyholder believes the classification is wrong. During that process, the carrier and the policyholder each have the opportunity to provide evidence to the administrator and the appeals board.
 14. The commenter was concerned that eliminating references to the constituencies to be represented on the appeals board could result in fewer insurance company representatives serving on the appeals board.

15. Eliminating the requirement on the Texas Amendatory Endorsement that the five members must come from specified constituencies (carrier, agent, public) does not change the commissioner's authority to appoint the required five voting members and one nonvoting member from TDI to serve on the appeals board.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under Insurance Code Article 5.96 and Sections 2051.201, 2052.002, and 36.001.
2. Commissioner's Order No. 3142, dated March 21, 2014, established a procedure for the commissioner to consider changes to NCCI's manuals:
 - a. NCCI makes a filing,
 - b. TDI publishes notice of the filing on the TDI website and distributes notice of the filing to subscribers to TDI's electronic news, with at least a 30-day period for interested persons to submit comments or request a hearing, and
 - c. the commissioner issues an order approving the filing, approving the filing with changes, or rejecting the filing.
3. TDI gave proper and timely notice in compliance with Commissioner's Order No. 3142.
4. Because of the disparity in bargaining power with regard to classification code determinations, amending the Texas Amendatory Endorsement to allow only the policyholder—instead of any party to the dispute—to appeal an NCCI appeals board decision on a dispute to TDI is reasonable.
5. Because the commissioner retains that authority, and because finding qualified people from each constituency willing to serve on the appeals board can be challenging, giving the commissioner the flexibility to appoint qualified board members regardless of constituency is reasonable.
6. The amendments to the NCCI *Basic Manual* and *Forms Manual* are reasonable, and are consistent with Texas workers compensation statutes and rules.
7. Applying the changes in *Item B-1432* to disputes that are pending with or received by NCCI on and after July 1, 2017, is reasonable.

The commissioner declines to modify the filing to retain the carrier's right to appeal, because the carrier has sufficient input when assigning the classification code and during the dispute resolution process.

The commissioner declines to modify the filing to retain the specific constituency requirements for the appeals board, because the commissioner retains the authority to screen and appoint board members to ensure a qualified, balanced board.

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The commissioner approves NCCI's filing, *Item B-1432—Establishment of Basic Manual Appendix G—Dispute Resolution Process*, for application to disputes that are pending with or received by NCCI on and after July 1, 2017.

A handwritten signature in black ink, appearing to read "DK Mattax", is written over a horizontal line.

David C. Mattax
Commissioner of Insurance