

No. 2016- 4870

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

**Date:** DEC 29 2016

**Subject Considered:**

**Amendments to the  
National Council on Compensation Insurance Manual  
NCCI Filing *Item 02-TX-2016***

The commissioner of insurance considered amendments to the National Council on Compensation Insurance *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*, proposed in *Item 02-TX-2016—Revisions to the Negotiated Deductible Program Option in the Texas Miscellaneous Rules* (TDI ECase No. 11929; SERFF Tracking No. NCCI-130748533; September 29, 2016).

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

**Findings of Fact**

1. NCCI filed *Item 02-TX-2016* on September 29, 2016, using the procedure adopted in Commissioner's Order No. 3142 for revisions to NCCI's workers compensation manuals.
2. *Item 02-TX-2016* establishes eligibility requirements for wrap-up construction project policies.
3. A wrap-up construction project, also known as a consolidated insurance program, an owner-controlled insurance program, or a contractor-controlled insurance program, uses individual policies for each contractor or subcontractor working on the project. The current Texas rule allows a contractor to qualify for a negotiated deductible based on its own individual total manual premium.
4. *Item 02-TX-2016* allows contractors in a wrap-up construction project to combine their total manual premiums to qualify for a negotiated deductible under Deductible Program Rule D-2-a in the Texas Miscellaneous Rules section of the NCCI *Basic Manual*.
5. *Item 02-TX-2016* also changes "estimated annual premium" to "total manual premium" for consistency with other rules, and makes minor formatting revisions.

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 02-TX-2016* apply to new and renewal policies with effective dates on and after January 1, 2017.
8. On October 28, 2016, TDI published notice of the filing on the TDI website at [www.tdi.texas.gov/rules/2016/nccimanual.html](http://www.tdi.texas.gov/rules/2016/nccimanual.html), and distributed notice of the filing to electronic news subscribers.
9. Mitsui Sumitomo and the American Insurance Association submitted comments on the filing by the December 2, 2016, deadline. Both comments supported the changes proposed in *Item 02-TX-2016*.
10. At TDI staff's request, NCCI amended its filing to remove the word "voluntary" from the implementation summary in its filing memorandum, because negotiated deductibles are not limited to the voluntary market in Texas. As filed, the statement read: "To become effective for new and renewal voluntary policies effective on and after 12:01 a.m. on January 1, 2017." The amended statement reads: "To become effective for new and renewal policies effective on and after 12:01 a.m. on January 1, 2017."

#### **Conclusions of Law**

1. The commissioner has jurisdiction over this matter under Insurance Code Article 5.96 and Sections 2051.002, 2051.201, 2052.002, and 2053.202, 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. The amendments to the NCCI *Basic Manual* are reasonable and consistent with Texas workers compensation statutes and rules.
5. Applying the changes in *Item 02-TX-2016*, as amended, to new and renewal policies with effective dates on and after January 1, 2017, is reasonable.

2016- 4870

Order re: NCCI *Item 02-TX-2016*  
Page 3 of 3

The commissioner approves NCCI's filing, *02-TX-2016—Revisions to the Negotiated Deductible Program Option in the Texas Miscellaneous Rules*, as amended, for new and renewal policies with effective dates on and after January 1, 2017.



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David C. Mattax  
Commissioner of Insurance