

PETITIONER	§	BEFORE THE
STAFF OF THE TEXAS	§	COMMISSIONER OF
DEPARTMENT OF INSURANCE	§	INSURANCE

**PETITION FOR ADOPTION OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE
STATISTICAL PLAN FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE
WITH TEXAS EXCEPTIONS**

The staff of the Texas Department of Insurance files this petition to adopt the *National Council on Compensation Insurance Statistical Plan for Workers Compensation and Employers Liability Insurance (NCCI Stat Plan)* and the Texas exceptions. Adopting the *NCCI Stat Plan* with Texas exceptions will continue the process of Texas becoming an NCCI state for workers' compensation purposes; help align workers' compensation statistical data reporting requirements between Texas and other NCCI states; and replace the outdated *Texas Workers' Compensation Statistical Plan (Texas Stat Plan)* with a plan that provides more detailed information, particularly with regard to workers' compensation losses.

Staff proposes that the commissioner adopt the *NCCI Stat Plan* with Texas exceptions for reporting statistical data for Texas workers' compensation policies with an effective date on or after 12:01 a.m. on January 1, 2015, and that any future revisions to the *NCCI Stat Plan* with Texas exceptions follow either the procedure under Insurance Code Article 5.96 or the procedure in Commissioner's Order No. 3142. Staff also requests that the *Texas Stat Plan* remain in effect for reporting statistical data for Texas workers' compensation policies with an effective date before 12:01 a.m. on January 1, 2015.

Insurance Code Article 5.96 and §§2053.101, 1805.054, 1805.055, and 36.001 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, classification 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 subsection (a) by filing a written petition with the chief clerk.

Section 2053.101 requires the commissioner to develop, and allows the commissioner periodically to modify, reasonable statistical plans for workers' compensation insurance. The total loss and experience of all insurance companies must be made available at least annually in the form and detail necessary to assist in determining whether an insurance company's rates meet the standards imposed under Insurance Code §2053.002.

Section 1805.054 allows a Texas workers' compensation insurer to subscribe to an advisory organization. Section 1805.055(a) allows an insurer to submit to or receive from a licensed advisory organization statistical plans, historical data, prospective loss costs, supplementary rating information, policy forms and endorsements, research, rates of individual insurers that are effective at the time the information is submitted or received or that were previously in effect, and performance of inspections.

Section 36.001(a) allows the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other Texas laws.

I. Proposal for Consideration and Adoption

- (1) Staff proposes that the commissioner adopt the *NCCI Stat Plan* and the Texas exceptions.
- (2) Staff proposes that the *NCCI Stat Plan* with Texas exceptions be effective for reporting statistical data for Texas workers' compensation policies with an effective date on or after 12:01 a.m. on January 1, 2015.
- (3) Staff proposes that any future revisions to the *NCCI Stat Plan* with Texas exceptions follow either the procedure under Insurance Code Article 5.96 or the procedure in Commissioner's Order No. 3142.
- (4) Staff proposes that the *Texas Stat Plan* remain in effect for reporting statistical data for Texas workers' compensation policies with an effective date before 12:01 a.m. on January 1, 2015.

II. Background

For the last several years, TDI has been working toward making workers' compensation insurance regulation in Texas more efficient. This effort has focused on eliminating functions

not required by statute, which reduces TDI involvement in administrative aspects of the process.

On March 21, 2014, the commissioner issued Commissioner's Order No. 3142, which adopted the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. This allowed NCCI to assume certain workers' compensation functions in Texas that TDI is not statutorily required to perform, and advanced Texas in the process of becoming an NCCI state.

III. Justification

Adoption of the *NCCI Stat Plan* with Texas exceptions is another essential step in becoming an NCCI state. NCCI is a licensed advisory organization in Texas, the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation, and the statistical agent and administrator for certain workers' compensation functions in Texas. This rule would adopt the *NCCI Stat Plan* and the Texas exceptions that amend the *NCCI Stat Plan* to comply with unique Texas statutory and rule requirements. NCCI will format the final Texas exceptions to match the style of its other manuals.

The *Texas Stat Plan* requirements are outdated and result in less detailed data reported in Texas than in most other NCCI states. The *Texas Stat Plan* contains minimum statistical reporting requirements for exposure, premium, and loss data for each workers' compensation policy a carrier issues. The *NCCI Stat Plan* requires carriers to report more detailed information than the current *Texas Stat Plan*. In spite of the minimal statistical reporting requirements in the *Texas Stat Plan*, most carriers are voluntarily reporting their Texas statistical data in an expanded format, which satisfies the *NCCI Stat Plan* statistical reporting requirements in other states.

In addition to requiring more detailed information, particularly with regard to losses, there are several new requirements in the *NCCI Stat Plan* with Texas exceptions that are not part of the current *Texas Stat Plan*. The *NCCI Stat Plan* requires reporting of a fraudulent claim, but the *Texas Stat Plan* does not. The *NCCI Stat Plan* defines a fraudulent claim as a claim that a court has determined to be fraudulent. The proposed Texas exception for this rule describes how to report a fraudulent claim on the statistical reports, depending on when the claim was determined to be fraudulent or whether only a portion of a claim was determined to be fraudulent.

The *NCCI Stat Plan* requires more detailed reporting of noncompensable claims than the *Texas Stat Plan*. The proposed Texas exception for this rule describes how to report a noncompensable claim. The requirements differ depending on when the claim was determined to be noncompensable or whether only a portion of a claim was determined to be noncompensable.

Under the *NCCI Stat Plan*, an accident with one claimant and reportable losses under both workers' compensation and employers' liability are reported as one claim, with combined loss experience. Under the *Texas Stat Plan*, these losses are reported separately.

Adoption of the *NCCI Basic Manual* with Texas exceptions and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* included changes to the available deductible options. Accordingly, the *NCCI Stat Plan* requires reporting of the three deductible options under the appropriate code in the header record, and reporting under the new statistical code for deductible credits.

The *NCCI Stat Plan* requires reports of a loss through the 10th subsequent report. The *Texas Stat Plan* currently requires including the loss through the fifth subsequent report.

The *NCCI Stat Plan* requires reporting of an Extraordinary Loss Event (ELE), which is a significant loss event from a workers' compensation perspective as determined by NCCI, using the ELE catastrophe code established by NCCI.

The *NCCI Stat Plan* requires reporting of case reserves of incurred indemnity amounts, including lifetime benefits associated with death and permanent total injuries, using the annuity values in the proposed updated pension tables.

The Texas exceptions expand the list of fees and expenses included as part of the Allocated Loss Adjustment Expense (ALAE) and the Unallocated Loss Adjustment Expense (ULAE) due to changes to Labor Code Chapters 401, 408, and 413.

The Texas exceptions also require the carrier to identify whether a claim was administered by a workers' compensation certified health care network established under Insurance Code Chapter 1305.

Adopting the *NCCI Stat Plan* with the Texas exceptions will help align workers' compensation statistical data reporting requirements between Texas and other NCCI states, and will provide more detailed information, particularly about workers' compensation losses. Conforming the

statistical reporting requirements in Texas to those used in the majority of other states enhances efficiency. Because the reporting requirements in the *NCCI Stat Plan* would provide more, rather than less, data, adopting the *NCCI Stat Plan* would not impair TDI's ability to regulate the Texas workers' compensation system.

Many carriers are already complying with the expanded reporting requirements, rather than submitting only the minimum information that the *Texas Stat Plan* requires. The carriers reporting in the expanded format in the *NCCI Stat Plan* would continue to report in that format after the commissioner adopts the *NCCI Stat Plan* with the Texas exceptions. The expanded list of fees and expenses in the Texas exceptions, and the requirement to identify whether a claim was administered by a workers' compensation certified health care network may require carriers to report additional data.

The 10 Texas carriers that are not currently using the expanded reporting format filed 28,245 unit reports in 2013, which is only about 12 percent of the total 241,441 Texas units filed in 2013. NCCI has already contacted those carriers to inform them of the proposed change. One of the 10 Texas carriers not currently using the expanded reporting format filed about 22,000 unit reports in 2013. That carrier already has the capability to report in the expanded format. Another of the 10 Texas carriers not currently using the expanded reporting format filed about 4,900 units in 2013. NCCI is currently assisting that carrier to report using the expanded format. The remaining eight carriers not currently reporting in the expanded format reported a combined total of about 1,600 units. Carriers have the option of entering the unit reports using NCCI's online system, which is available at no cost to the carrier. Carriers who choose to use this method avoid system changes and the associated costs.

Carriers will benefit from having more uniform statistical data reporting requirements among states. TDI will benefit by having more detailed information to use in regulating the workers' compensation market. Carriers and policyholders will also benefit from NCCI's technical expertise, infrastructure, and support. All NCCI manuals are currently available electronically on the NCCI website to subscribers and affiliates of NCCI. The Texas exceptions to the *NCCI Stat Plan* will also be available through the same system. NCCI has the staffing and technical resources to create, maintain, and support links between the information in the NCCI manuals and the Texas exceptions, which makes NCCI's electronic manuals very easy to use.

Commissioner's Order No. 3142, adopting the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, ordered that any proposed future revisions to NCCI's manuals be considered under either the procedure established in Insurance Code Article 5.96, or by the following procedure: 1) NCCI makes a

filing; 2) 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 3) the commissioner issues an order approving the filing, approving the filing with changes, or rejecting the filing. Any proposed future revisions to the *NCCI Stat Plan* with Texas exceptions will follow one of these procedures.

IV. Post-Transition TDI Functions

Even as Texas adopts the various NCCI manuals with Texas exceptions, to allow NCCI to perform certain workers' compensation administrative functions, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements. These requirements include: 1) prescribing standard policy forms and a uniform policy; 2) approving nonstandard 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.

V. Future Projects

This rule only encompasses the *NCCI Stat Plan* with Texas exceptions. TDI staff expects to address the *NCCI Experience Rating Plan* with Texas exceptions in future rulemaking.

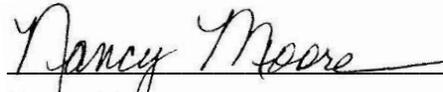
VI. Requested Action

To maximize the benefits to carriers and policyholders of more uniform rules and requirements across multiple states, staff recommends that TDI continue to move Texas toward becoming an NCCI state. As adopting the *NCCI Stat Plan* with Texas exceptions is an essential step in that process, staff respectfully requests that

- (1) the commissioner adopt the *NCCI Stat Plan* and the Texas exceptions
- (2) the *NCCI Stat Plan* with Texas exceptions will be in effect for reporting statistical data for Texas workers' compensation policies with an effective date on or after 12:01 a.m. on January 1, 2015
- (3) any future revisions to the *NCCI Stat Plan* with Texas exceptions will follow either the procedure under Insurance Code Article 5.96 or the procedure in Commissioner's Order No. 3142, and

(4) the *Texas Stat Plan* will remain in effect for reporting statistical data for Texas workers' compensation policies with an effective date before 12:01 a.m. on January 1, 2015.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nancy Moore". The signature is written in black ink and is positioned above a horizontal line.

Nancy Moore

WC Classification and Premium Calculation

May 30, 2014

Date