

**SUBCHAPTER M. FILING REQUIREMENTS****DIVISION 6. FILINGS MADE EASY - REQUIREMENTS FOR RATE AND RULE FILINGS****28 TAC §5.9332**

**INTRODUCTION.** The Commissioner of Insurance adopts amended 28 TAC §5.9332, relating to workers' compensation classification relativities. The amendments are adopted without changes to the proposed text published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1167).

**REASONED JUSTIFICATION.** Section 5.9332(7)(B) provides a list of rate change information that must be included in workers' compensation filings using classification relativities established under Insurance Code §2053.051. Amending §5.9332 to delete (7)(B) makes the section consistent with the amendments to Insurance Code §2053.051 made under Senate Bill 1336, 86th Legislature, Regular Session (2019). SB 1336 eliminated the requirement that the department develop workers' compensation classification relativities. The change to Insurance Code §2053.051 becomes effective on July 1, 2020; therefore, this rule amendment is adopted to be effective July 1, 2020.

The adopted amendments delete paragraph (7)(B) and all the subparts of it, and existing paragraph (7)(C) is redesignated as new paragraph (7)(B). Also, paragraph (3)(A)(viii) is amended to insert a comma following the word "licenses," for consistency with the department's style for punctuation.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** The department received one written comment in support of the proposal from the Office of Injured Employee Counsel.

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**Comment on §5.9332.** The commenter supports the proposed rule changes as necessary to implement SB 1336.

**Agency Response to Comment on §5.9332.** The department appreciates the supportive comment.

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to §5.9332 under Insurance Code §2053.051 as amended by SB 1336 and Insurance Code §36.001.

SB 1336 amended Insurance Code §2053.051 to eliminate the statutory requirement for the department to develop workers' compensation classification relativities.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

### TEXT.

#### **§5.9332. Categories of Supporting Information.**

The categories of supporting information addressed in this section describe the different items that may be required or requested in a rate and rule filing. Section 5.9334 of this title (relating to Requirements for Rate and Rule Filing Submissions) lists the categories of supporting information that different rate and rule filings require. Categories of supporting information include:

(1) Rate filing checklists. These are found in the Filings Made Easy Guide and show the information filers need to include with the filing.

(2) Actuarial memorandum. This memorandum describes the methodologies for determining each component used in developing the actuarial support, and a qualitative discussion on the selections for each component. It includes an explanation for any changes in methodologies or any changes to the component selections from the previous analysis.

(3) Actuarial support. This type of support consists of sufficient documentation and analysis to allow a qualified actuary to understand and evaluate the rates, each component used in developing the rates, and the appropriateness of each material assumption. Actuarial support is divided into the following subcategories:

(A) Rate indications consist of the analyses the insurer relies on to support its filed rates, each component used to develop the rate indications, and support for each of these components, including the data and methodologies used by the insurer. Rate indications may be on an overall basis or by coverage, class, form, or peril when appropriate. Rate indications must include each of the following with documentation in support of each, to the extent applicable:

(i) premiums, on-level factors, and premiums at current rate level;

(ii) incurred and paid losses;

(iii) loss and claim development factors;

(iv) premium and loss trend factors;

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(v) hurricane and nonhurricane catastrophe factors or loss provisions, including the definition of a catastrophe and how the definition has changed over the experience period used to calculate the provisions;

(vi) off-balance factors if there are changes in relativities, for example: discounts, surcharges, or territorial definitions;

(vii) the measure of credibility, the complement of credibility, the criteria for full credibility, and the method for determining partial credibility;

(viii) expenses, including: general expenses; other acquisition expenses; commissions and brokerage expenses; taxes, licenses, and fees; loss adjustment expenses; and expense offsets from fee income;

(ix) the net cost of reinsurance;

(x) for rates filed under Insurance Code Chapter 2251, profit provisions, including risk loads;

(xi) for rates filed under Insurance Code Chapters 2053 and 3502, profit and contingency provisions, including risk loads;

(xii) the effect on premiums of individual risk variations based on loss or expense considerations; and

(xiii) any other component used in developing a rate indication.

(B) Relativity analysis consists of both the analysis and support for the selected rating factors, including the loss experience and methodologies used by the insurer to derive the indicated rating factors. Supporting information must include:

- (i) the current relativity;
- (ii) the indicated relativity;
- (iii) support for the indicated relativities, including the loss experience and methodologies used by the insurer to derive the indications;
- (iv) the selected relativity;
- (v) support for the selected relativities if they differ from the indicated relativities; and
- (vi) the percent change from current to selected relativity.

(C) Other actuarial support consists of both the analysis and support for the selected rates, including the loss experience and methodologies used by the insurer to derive them. The support must clearly demonstrate why the proposed rates are not excessive, inadequate, or unfairly discriminatory. A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer. These costs include claims, claim settlement expenses, operational and administrative expenses, and the cost of capital.

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(4) SERFF rate data. This data consists of all information necessary to complete the company rate information fields in SERFF.

(5) Policyholder impact information. Policyholder impact information must reflect the changes for all policyholders. This information consists of the following provided separately by form or coverage:

(A) a histogram that graphically depicts the impact of the filed changes to policyholders in 5 percentage point intervals;

(B) the policy counts in each interval displayed in either the histogram or a separate table;

(C) the minimum and maximum policyholder impact; and

(D) a description of the changes that contributed to the minimum and maximum policyholder impact.

(6) Average rate change by county. This is the average impact of all changes included in a filing by county, provided separately by form or coverage.

(7) Rate change information. Rate change information must reflect the changes for all policyholders.

(A) For loss cost reference filings, rate change information consists of:

(i) the proposed percentage change in the underlying loss costs;

(ii) the change in the insurer's loss cost multiplier;

(iii) the combined change in the loss costs and the loss cost multipliers;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change for all coverages and forms combined.

(B) For all other filings, rate change information consists of:

(i) the average proposed rate change for each applicable coverage or form;

(ii) the total average rate change for all applicable coverages and forms combined;

(iii) a six-year rate change history; and

(iv) the effect that changes in fee income have on the total average rate change for all applicable coverages and forms combined.

(8) Historical premium and loss information. This information consists of an insurer's most recent five-year experience, for both Texas and countrywide, of direct premiums written, direct premiums earned, direct losses and defense and cost containment expenses paid, direct losses and defense and cost containment expenses incurred, and the ratio of the direct losses and defense and cost containment expenses incurred to direct earned premiums. The Texas experience is the amounts, or a subset of

the amounts, pertinent to the line of business reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement. The countrywide experience is the amounts, or a subset of the amounts, pertinent to the line reported on the insurer's Insurance Expense Exhibit (IEE), Part III in the insurer's Annual Statement.

(9) Expense information. This information consists of Texas experience and, if applicable, countrywide experience. The loss adjustment expenses must be shown as a dollar amount and as a ratio to incurred losses. All other expenses must be shown as a dollar amount and as a ratio to premium. All expense items must be on a direct basis.

(A) Three years of historical Texas experience must be included for commissions and brokerage expenses incurred; taxes, licenses, and fees incurred; losses incurred; and defense and cost containment expenses incurred. These must be the amounts, or a subset of the amounts, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement.

(B) Three years of historical countrywide experience must be included for commissions and brokerage expenses incurred, other acquisition expenses incurred, general expenses incurred, losses incurred, defense and cost containment expenses incurred, and adjusting and other loss adjustment expenses incurred. These must be the amounts, or a subset of the amounts, reported in the insurer's IEE, Part III in the insurer's Annual Statement.

(C) Three years of historical countrywide experience must be included for each category of disallowed expenses. These must be the amounts reported in the insurer's response to the annual TDI Disallowed Expense Call. Other acquisition and general expenses, each adjusted to remove disallowed expenses, must be listed separately. The total adjusted general expense percentage must reflect any necessary adjustment due to the capping of general expenses at 110 percent of the industry median for the line of insurance.

(D) To the extent that the expense provisions differ from the historical expenses, the filing must provide additional support for the expense provisions underlying the rates. Provisions for commissions and brokerage expenses; other acquisition expenses; general expenses; taxes, licenses, and fees; and profit and contingencies must be displayed and a sum computed. For filings submitted under Insurance Code Chapter 2251, the expense provisions must exclude disallowed expenses.

(E) When additional expense provisions are included, such as the net cost of reinsurance or an expense offset from fee income, the filing must include expected or historical experience. Support for provisions for the net cost of reinsurance may include reinsurance premiums, expected reinsurance recoverables, and a description of reinsurance coverage including attachment points and limits.

(10) Loss cost information for reference filings. This information consists of the following:

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(A) the TDI file number of the loss costs being referenced;

(B) the derivation of the proposed loss cost multiplier including any

loss cost modification factor and the following expense and profit provisions:

(i) commissions and brokerage expenses;

(ii) other acquisition expenses, adjusted to remove disallowed expenses;

(iii) general expenses, adjusted to remove disallowed expenses;

(iv) taxes, licenses, and fees; and

(v) underwriting profit and contingencies;

(C) supporting documentation for loss cost modification factors other than 1.00;

(D) the loss cost multiplier to be used as of the effective date of the filing;

(E) the loss cost multiplier used immediately before the effective date of the filing; and

(F) the effective rate-level change due to any change in the loss cost multiplier.

(11) Profit provision information. This information consists of a description of the methodology, assumptions, and support for the assumptions used to arrive at the profit provisions underlying the proposed rates.

(12) A side-by-side comparison. This comparison must show any differences between the previously filed and the proposed rates, rating manual, rules, or other supplementary rating information.

(13) A mark up. This is a copy of the previously filed rates, rating manuals, rules, or other supplementary rating information indicating the differences between it and the revised version, with any new language or factors underlined and the deleted language or factors in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language or factors.

(14) Sample premium impacts by selected ZIP codes. These are sample premiums and premium changes based on all changes included in a filing for certain specified policy types and ZIP codes.

(15) Rate filing templates. These are found in the Filings Made Easy Guide and provide insurers with an optional means of providing certain supporting information and supplementary rating information.

(16) Other information. This includes any other information required by the Commissioner necessary to determine that the rates meet the rate standards.

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**CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on 5/11/2020.

DocuSigned by:  
*James Person*  
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James Person, General Counsel  
Texas Department of Insurance

The Commissioner adopts amendments to 28 TAC §5.9332.

DocuSigned by:  
*Kent Sullivan*  
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Kent C. Sullivan  
Commissioner of Insurance

Commissioner's Order No. **2020-6342**