

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

PETITION TO REPEAL THE *TEXAS RETROSPECTIVE RATING PLAN MANUAL*

The staff of the Texas Department of Insurance files this petition to repeal the *Texas Retrospective Rating Plan Manual (Texas Retro Plan)*. The *Texas Retro Plan* is optional and obsolete. After it is repealed, insurers offering retrospectively rated policies will continue to have the options of making a reference filing to use the National Council on Compensation Insurance *Retrospective Rating Plan Manual (NCCI Retro Plan)* or filing their own retrospective rating plans for use in Texas.

Insurance Code Articles 5.96 and 5.77, and Sections 1805.054, 1805.055, 2052.002, 2053.001, 2053.003, and 36.001 authorize staff to file this petition and the commissioner to take the requested action.

Article 5.96(a) authorizes TDI to 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.

Article 5.77 authorizes TDI to make or approve and promulgate optional premium rating plans designed to encourage the prevention of accidents, to recognize the peculiar hazards of individual risks, and to give due consideration to interstate as well as intrastate experience of those risks for various lines of insurance, including workers' compensation insurance. Those plans may include premium discount plans; retrospective rating plans; or other systems, plans or formulas, however named, if the plans' rates are not excessive, inadequate, or unfairly discriminatory.

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 2052.002(b) allows an insurance company to use an endorsement that is appropriate to the company's plan of operation and submitted to and approved by TDI.

Section 2053.001(5) defines "supplementary rating information" as any manual, rating plan or schedule, plan of rules, rating rule, classification system, territory code or description, or other similar information required to determine the applicable premium for an insured. The term includes increased limits factors, classification relativities, deductible relativities, and other similar factors and relativities.

Section 2053.003 requires each insurance company to file with TDI, no more frequently than once every six months, all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas.

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

Staff proposes that

1. TDI repeal the rules, factors, values, endorsements, and forms in the *Texas Retro Plan* for new and renewal workers' compensation policies written on a retrospectively rated basis with effective dates on and after 12:01 a.m., January 1, 2017.
2. Insurers writing policies on a retrospectively rated basis with effective dates before January 1, 2017, under the *Texas Retro Plan* must use the *Texas Retro Plan* to make all retrospective adjustments for those policies.
3. For new and renewal workers' compensation policies written on a retrospectively rated basis with effective dates on and after 12:01 a.m., January 1, 2017, insurers must either make a reference filing with TDI to use the *NCCI Retro Plan*, or file their own retrospective rating plans with TDI.

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.

In 2014, the commissioner issued a series of orders to enable Texas to become an NCCI state. Becoming an NCCI state allowed NCCI to assume certain workers' compensation functions in Texas that TDI is not statutorily required to perform. The orders adopted the following:

- NCCI *Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI *Forms Manual* (Order No. 3142, March 21, 2014);
- NCCI *Statistical Plan Manual* with Texas exceptions (Order No. 3455, July 29, 2014);
and
- NCCI *Experience Rating Plan Manual* with Texas exceptions (Order No. 3708, December 5, 2014).

Unlike the other NCCI manuals, which fulfill statutory requirements for uniform workers' compensation insurance regulation, there is no requirement for a uniform retrospective rating plan. Insurers have always been permitted to file their own retrospective rating plans or use the *Texas Retro Plan*. On June 1, 2011, the NCCI *Retro Plan* became available for use in Texas as an alternative to the *Texas Retro Plan*. NCCI filed the NCCI *Retro Plan* under Insurance Code Sections 2052.002, 2053.003 and 1805.055, and has been filing updates to its plan annually. In contrast, most of the *Texas Retro Plan* has not been updated for decades.

III. Justification

This rule would repeal the obsolete *Texas Retro Plan*, leaving in place the alternatives that currently exist for insurers using retrospective rating plans. Those alternatives are: 1) using the NCCI *Retro Plan* after making a reference filing with TDI to use that plan, and 2) filing their own insurer-specific plans under Insurance Code Sections 2052.002 and 2053.003 for use in Texas.

Staff expects little impact to insurers or policyholders from retiring the *Texas Retro Plan*, since few insurers use the *Texas Retro Plan*. Insurers can also make use of the alternatives above. A carrier filing its own plan could still use the *Texas Retro Plan* as a reference for developing its own plan, along with updated rating plan parameters, factors, and other plan information.

Insurers and policyholders will benefit from having up-to-date rating plan parameters, factors, and other plan information for workers' compensation policies written on a retrospectively rated basis.

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

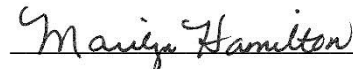
the statistical agent and administrator for certain workers' compensation functions in Texas. Insurers and policyholders that choose to use the NCCI *Retro Plan* will benefit from NCCI's technical expertise, infrastructure, and support. All NCCI manuals are currently available electronically on the NCCI website to subscribers and affiliates of NCCI. 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.

IV. Requested Action

Staff recommends that

1. TDI repeal the rules, factors, values, endorsements, and forms in the *Texas Retro Plan* for new and renewal workers' compensation policies written on a retrospectively rated basis with effective dates on and after 12:01 a.m., January 1, 2017.
2. Insurers writing policies on a retrospectively rated basis with effective dates before January 1, 2017, under the *Texas Retro Plan* must use the *Texas Retro Plan* to make all retrospective adjustments for those policies.
3. For new and renewal workers' compensation policies written on a retrospectively rated basis with effective dates on and after 12:01 a.m., January 1, 2017, insurers must either make a reference filing with TDI to use the NCCI *Retro Plan*, or file their own retrospective rating plans with TDI.

Respectfully submitted,



Marilyn Hamilton

Director, Personal and Commercial Lines Office

8-25-15

Date