

W-1213-01-I

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

PETITION FOR ADOPTION OF THE *NATIONAL COUNCIL ON COMPENSATION INSURANCE BASIC MANUAL* WITH TEXAS EXCEPTIONS, AND NATIONAL AND TEXAS-SPECIFIC ENDORSEMENTS AND FORMS IN THE *NATIONAL COUNCIL ON COMPENSATION INSURANCE FORMS MANUAL*

The staff of the Texas Department of Insurance files this petition to adopt the *National Council on Compensation Insurance (NCCI) Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, to allow NCCI to assume certain workers' compensation functions in Texas. Staff proposes that the changes be effective for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014.

TDI staff requests that the rules, classifications, endorsements, and forms in the *NCCI Basic Manual*, the *NCCI Forms Manual*, and the Texas exceptions be in effect for policies with effective dates on or after 12:01 a.m., June 1, 2014. TDI staff requests that the rules, classifications, endorsements, and forms contained in the *Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Texas Basic Manual)* remain in effect only for policies with an effective date on or before 12:01 a.m., June 1, 2014. The Experience Rating Plan in the *Texas Basic Manual* would continue in effect until TDI adopts the *NCCI Experience Rating Plan* with Texas exceptions. TDI staff also requests that the rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* expire at 12:01 a.m., June 1, 2015.

Insurance Code Article 5.96 and §§2051.002, 2051.201, 2052.002, 2053.051, and 2053.052 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, classifications 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 2051.002 requires that Insurance Code Chapters 2051, 251 (as it relates to workers' compensation insurance), 255, 426, 2052, 2053, and 2055 be construed and applied independently of any other law that relates to insurance rates and forms or prescribes the duties of the commissioner or TDI.

Section 2051.201 allows the commissioner to adopt and enforce all reasonable rules as are necessary to carry out the provisions of a law referenced in §2051.002(1), (2), (3), (4), or (5).

Section 2052.002 requires the commissioner to prescribe standard policy forms and a uniform policy for workers' compensation insurance.

Section 2053.051 requires TDI to determine hazards by class, establish classification relativities, and revise the classification system at least once every five years.

Section 2053.052 requires the commissioner to adopt a uniform experience rating plan for workers' compensation insurance and revise it at least once every five years. It also requires the commissioner to adopt reasonable rules and plans requiring the interchange of loss experience necessary for the application of the rating plan.

I. Proposal for Consideration and Adoption

- (1) Staff proposes that the commissioner adopt the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*.
- (2) Staff proposes that, with this rule, the commissioner allow the Experience Rating Plan contained in the *Texas Basic Manual* to continue in force until TDI adopts the *NCCI Experience Rating Plan* with Texas Exceptions, independent of the rules, classifications, endorsements, and forms in the manual.
- (3) Staff proposes that the rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* continue to be in effect only for policies with an effective date before 12:01 a.m., June 1, 2014.
- (4) Staff proposes that the rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* expire at 12:01 a.m., June 1, 2015.

- (5) Staff proposes that the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* be effective for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014.
- (6) Staff proposes that the commissioner would consider any proposed revisions to NCCI's manuals under either the procedure established in Insurance Code Article 5.96 or the following procedure: 1) NCCI makes a filing; 2) TDI publishes notice of the filing, 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.

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 the administrative aspects of the process.

In the first quarter of 2012, Commissioner Kitzman directed that TDI work toward adopting NCCI's manuals with Texas exceptions, thereby making NCCI the administrator for certain workers' compensation functions, which is informally known as being "an NCCI state." TDI staff determined that, for Texas to become an NCCI state, TDI would need to transfer responsibility to carriers for assigning classification codes and for handling inquiries about those codes; and adopt NCCI's national manuals, plans, and forms, including Texas exceptions that recognize unique Texas rules and classifications.

On November 6, 2012, Commissioner Kitzman issued Commissioner's Order No. 12-0876, effective December 3, 2012, which amended the *Texas Basic Manual*. The amendments eliminated the provisions that required TDI to approve changes to workers' compensation classification codes applicable to businesses, and to assign classification codes to businesses.

TDI now directs telephone and written inquiries concerning workers' compensation classifications applicable to businesses to the carrier that writes the coverage or provides a quote for the coverage. The carrier selects the appropriate classification code from the codes in the *Texas Basic Manual*. Currently, TDI continues to help resolve disputes about the classifications applicable to specific businesses.

In July 2013, Commissioner Rathgeber directed that TDI continue to pursue the transition toward becoming an NCCI state. This rule, which would make NCCI the administrator for certain workers' compensation functions, is an essential step in that transition. In order for Texas to become an NCCI state for workers' compensation purposes, TDI must adopt the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. The Texas exceptions to the NCCI rules and forms are necessary to preserve the statutory and rule requirements that are unique to Texas and to make the transition to an NCCI state as seamless as possible for policyholders.

III. Proposed Changes

This rule would adopt the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, to allow NCCI to assume certain workers' compensation functions in Texas. The Texas exceptions make substantive changes to the *NCCI Basic Manual* to reflect the current rules and statutes; and staff has worked to harmonize the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* that are proposed for adoption with current Texas endorsements and forms.

Staff proposes that, with this rule

- policies with an effective date before 12:01 a.m., June 1, 2014, will use the rules, classifications, endorsements, and forms contained in the *Texas Basic Manual*, until it expires at 12:01 a.m., June 1, 2015.
- policies with an effective date on or after 12:01 a.m., June 1, 2014, will use the rules, classifications, endorsements, and forms contained in the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*.
- the *Texas Experience Rating Plan* contained in the *Texas Basic Manual* will continue in effect until TDI adopts the *NCCI Experience Rating Plan* with Texas exceptions.
- the commissioner would consider any proposed revisions to NCCI's manuals under either the procedure established in Insurance Code Article 5.96 or the

following procedure: 1) NCCI makes a filing; 2) TDI publishes notice of the filing, 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.

NCCI's Texas functions would include: 1) drafting new or revised manual rules and forms; 2) filing the rules and forms with TDI for acceptance as submitted, acceptance with changes, or rejection; 3) upon request, assigning classification codes to businesses; and 4) responding to telephone and written inquiries regarding workers' compensation classification and premium calculation.

NCCI would assume the responsibility for drafting new rules or forms or revising current rules or forms and filing them with TDI for acceptance as submitted, acceptance with changes, or rejections. This is a major change from the current process in which TDI staff drafts most new rules, endorsements, or forms and proposes most revisions to rules, endorsements, and forms.

Currently, TDI staff proposes manual revisions under Insurance Code Article 5.96. Article 5.96 permits, but does not require, TDI to use the Article 5.96 procedure 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 workers' compensation insurance and other lines. Additionally, Insurance Code Chapters 2051, 2052, and 2053, which address the Texas functions NCCI would assume responsibility for with this rule, do not require adherence to the Article 5.96 procedure. Those functions include administering manual rules and forms, assigning classification codes to businesses from the existing Texas codes upon request, and responding to inquiries.

Because NCCI would be making filings to update its manuals and forms, rather than submitting rulemaking petitions, it makes more sense to treat the proposed manual changes as filings, provided that interested persons get adequate notice and opportunity to comment on them. TDI staff proposes that the commissioner consider changes to NCCI's manuals under either the procedure set forth below, which follows more closely the way TDI reviews form filings for other advisory organizations; or alternatively, the procedure established in Article 5.96. Staff proposes the following procedure: 1) NCCI makes a filing; 2) TDI publishes notice of the filing, with at least a 30-day period for interested persons to submit comments or request a hearing; and 3) the commissioner,

with or without a hearing, issues an order approving the filing, approving the filing with changes, or rejecting the filing.

The *NCCI Basic Manual* and the Texas exceptions incorporate the Texas classifications currently in effect; so as a result of this rule, the current Texas classifications would remain in effect, and would not change to the national classifications used in most NCCI states. This is important for Texas policyholders to keep fluctuations in their workers' compensation premiums at a minimum. With the adoption of the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, upon request NCCI will assist in assigning classifications to specific businesses. NCCI will answer telephone and written inquiries about Texas classification codes and other Texas workers' compensation issues.

The Texas exceptions include a dispute resolution process for disputes about rules or classifications that cannot be resolved between the policyholders and carriers. TDI would participate in the dispute resolution process, which is more formal than TDI's current process. The new process involves a dispute resolution panel comprised of five voting members appointed by the commissioner of insurance, one or more members of the TDI staff, and one nonvoting technical advisor from NCCI. Although it is more formal than TDI's current process, staff does not expect it to require involved persons to retain counsel, to travel if they do not wish to do so, or to be otherwise more burdensome for policyholders and carriers than the current process.

The Texas exceptions include updated percentages and minimum premiums for increased limits for employers' liability coverage if a policyholder elects employers' liability limits above the standard limits. The updated percentages are based on NCCI's actuarial analysis of more recent historical loss experience, which results in percentages that more closely reflect what the additional premium should be for optional increased limits for employers' liability coverage.

The Texas exceptions delete the aggregate deductible and the per accident/aggregate deductible options and replace those options with the per claim deductible and the medical-only deductible options. This change eliminates two rarely-chosen options for Texas workers' compensation policies and adds two other options that are used in other NCCI states. Staff expects that eliminating these seldom-used deductible options will have little to no adverse impact on Texas policyholders, and that Texas policyholders will benefit from being able to choose from two additional deductible options that are popular in other NCCI states.

The Texas exception pages do not include tables for the premium credits for the per accident, per claim, and medical-only deductible options. Instead, the Texas exception pages direct carriers to use loss elimination ratios (LERs) to calculate premium credits for those deductible options. The LER represents the percentage of losses removed from the premium calculation when an employer is responsible for losses below the deductible. LERs vary by type, deductible amount, and hazard group. The LER is the key variable used in determining the premium credit. Carriers are required to file their premium credits developed using the LERs with TDI. Many carriers that operate in Texas already use LERs to calculate their premium credits in other states. As part of its transition plan, NCCI will provide information to carriers and respond to inquiries on LERs.

The Texas exceptions update the premium discount table that is currently available for carriers to use for policyholders meeting the eligibility requirements. The premium discount table that carriers can use is one of the NCCI premium discount tables that are familiar to many carriers writing workers' compensation in Texas. Using this updated premium discount table contributes to having consistent rules between states, where possible.

Staff proposes to adopt 62 national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. Of the 62 endorsements and forms, staff proposes to adopt without changes 32 that are identical to those in the *Texas Basic Manual* and five retrospective rating endorsements that are identical to those previously filed by NCCI and approved by TDI. Of the 62 endorsements and forms, staff proposes to adopt with only minor editorial changes 11 that already exist in the *Texas Basic Manual* and seven retrospective rating endorsements previously filed by NCCI and approved by TDI. Most of the editorial changes to these 18 endorsements are to reference the *NCCI Basic Manual* instead of the *Texas Basic Manual*. Staff proposes to adopt seven additional endorsements and forms in the *NCCI Forms Manual*, and to discontinue two Texas-specific endorsements that, with the adoption of this rule, will be obsolete.

Staff proposes to adopt two Texas-specific endorsements that address changes to the types of deductibles available for use in Texas. These are the Texas Claim Deductible Endorsement (WC 42 06 05) and the Texas Medical Benefits Deductible Endorsement (WC 42 06 06). Staff proposes to discontinue the Texas Aggregate Deductible Endorsement (WC 62 06 03 B) and the Texas Accident/Aggregate Deductible Endorsement (WC 42 06 04 B) because these types of deductibles will no longer be available.

Staff proposes to adopt the Texas Notification Endorsement of Pending Law Change to Terrorism Risk Insurance Program Reauthorization Act of 2007 (WC 42 01 01). NCCI previously filed, and TDI approved, this endorsement. Carriers had to obtain prior approval from TDI before using the endorsement. With the adoption of this endorsement in the *NCCI Forms Manual*, carriers will be able to use it without prior approval. Staff expects that adopting WC 42 01 01 as a standard endorsement will improve consistency between Texas policies.

Staff proposes to adopt the Rural Utilities Service Endorsement (WC 00 03 09 B), which is already in the *Texas Basic Manual* under a different name. The version of the Rural Utilities Service Endorsement in the proposed *NCCI Forms Manual* updates statutory references in the endorsement's title and text.

Staff also proposes to adopt the Voluntary Compensation and Employers Liability Coverage Endorsement (WC 00 03 11A), which is already in the *Texas Basic Manual*, to clarify the language and improve consistency between Texas policies and policies in other states.

Staff proposes to adopt two endorsements that are not currently included in the *Texas Basic Manual*. In both cases, these endorsements clarify and standardize practices that are already common in Texas. The Contingent Experience Rating Modification Factor Endorsement (WC 00 04 12) improves notice to policyholders about possible changes to their experience modifiers, depending on the available data. The Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22 A) is frequently filed and approved for use in Texas; adopting it as a standard form will improve consistency between Texas policies and policies in other states.

Carriers and agents usually prepare quotes to policyholders at least 90 days prior to expiration of the current coverage. To allow carriers time to implement the changes, staff requests that the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, be effective for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014.

IV. Justification

For policyholders operating in multiple states and carriers writing workers' compensation coverage in multiple states, having consistent rules and eliminating unnecessary government involvement enhances efficiency. For TDI, transferring the responsibility for administrative functions, where possible, would allow staff to focus more on substantive issues in workers' compensation insurance.

NCCI is a licensed advisory organization in Texas and is the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation. Carriers and policyholders would benefit from NCCI's technical expertise, infrastructure, and training program.

All NCCI manuals are currently available electronically on the NCCI website to subscribers and affiliates of NCCI. If Texas becomes an NCCI state, then the Texas exceptions will also be available through this same system. The electronic version of NCCI's manuals and the state exceptions are very user-friendly because of the links between information in the NCCI manuals and the information in the state exceptions. NCCI has also offered to provide in-person training for carriers and agents in multiple Texas locations to help with the transition.

Upon request and for a fee paid by the carrier, NCCI will inspect businesses to help determine the appropriate classification code. TDI offered this service "free of charge" in the past, and received frequent requests. However, due to budget cuts, TDI has been unable to provide inspections for classification code assignments for the last decade.

Agents will pay an annual \$50 fee to access the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. However, NCCI will offer agents free access to the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, until June 1, 2015.

Carriers will pay additional fees to NCCI for subscribing to NCCI services in Texas. For the top four national workers' compensation carriers, the current cost range for NCCI services is 11 to 18 cents per \$100 of direct written premium. If Texas becomes an NCCI state, then those top four national carriers' costs will increase to 23 to 29 cents per \$100 of direct written premium. However, the additional fees may be offset by the reduction in the maintenance taxes for workers' compensation that are payable and due to the Comptroller of Public Accounts on March 1, 2014.

NCCI advises that there are certain economies of scale built into its pricing structure for those carriers whose direct written premiums in Texas are large enough to qualify. Additionally, NCCI has indicated to TDI that it would discount some of its fees during the transition period to make the transition easier. NCCI has developed a transition plan through 2015 allowing discounts for additional Texas services.

TDI anticipates some questions and concerns from insurance agents about this transition. NCCI is planning to offer free classes to agents and carriers in the spring of 2014 in at least five major cities in Texas to explain the changes and to demonstrate how to access the various manuals on the NCCI website. NCCI has invited TDI staff to participate in these meetings.

V. Post-Transition TDI Functions

After Texas becomes an NCCI state, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements, such as 1) prescribing standard policy forms and a uniform policy; 2) approving non-standard 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.

To ensure that TDI has considered all relevant issues and to reduce or eliminate any unintended consequences or concerns, TDI is and will continue to be in close communication with stakeholders regarding the transition of Texas to an NCCI state. In coordination with NCCI, TDI is addressing questions from stakeholders to make this transition as smooth as possible. TDI will address stakeholders' concerns and issues as they surface.

VI. Future Projects

This rule only encompasses the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. There are additional NCCI manuals that TDI staff must review. TDI expects to address the Texas exceptions for these other manuals in future rule making. Changes to the *Texas Experience Rating Plan* currently contained in the *Texas Basic Manual* will be considered in future rule making.

VII. Staff Recommendation

TDI staff has been working with NCCI to ensure that the NCCI manuals with Texas exceptions will have a minimal substantive impact on policyholders, and expects that the transition to the NCCI manuals will be seamless to most policyholders. 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. Adopting the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, is an essential step in that process.

VIII. Requested Action

Staff respectfully requests that

- (1) the commissioner adopt the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*.
- (2) with this rule, the commissioner allow the Experience Rating Plan contained in the *Texas Basic Manual* to continue in force until TDI adopts the *NCCI Experience Rating Plan* with Texas Exceptions, independent of the rules, classifications, endorsements, and forms in the manual.
- (3) the rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* continue to be in effect only for policies with an effective date before 12:01 a.m., June 1, 2014.
- (4) the rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* expire at 12:01 a.m., June 1, 2015.
- (5) the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, be effective for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014.
- (6) the commissioner consider any proposed future revisions to NCCI's manuals under either the procedure established in Insurance Code Article 5.96 or the following procedure: 1) NCCI makes a filing; 2) TDI publishes notice of the filing, 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.

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

Date December 23, 2013