

No. **2020-6301**

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

Date: 3/27/2020

Subject Considered:

**National Council on Compensation Insurance Filing
*Item 02-TX-2019--Revisions to the Texas Dispute Resolution Process
and Texas Amendatory Endorsement***

The subject of this order is the adoption of amendments to the National Council on Compensation Insurance (NCCI) manuals, as proposed in *Item 02-TX-2019--Revisions to the Texas Dispute Resolution Process and Texas Amendatory Endorsement* (TDI ECase No. 23035; SERFF Tracking Nos. NCCI-132153301 and 132153302).

Background

NCCI filed *Item 02-TX-2019* to amend the NCCI *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)* and *Forms Manual of Workers Compensation and Employers Liability Insurance (Forms Manual)*.

The amendments in *Item 02-TX-2019* clarify how the voluntary dispute resolution services NCCI offers work in Texas. To that end, the amendments in *Item 02-TX-2019* eliminate the appeals board. It was seldom used, did not produce a final resolution to classification disputes, and may have caused confusion about the remedies available to carriers and policyholders in a dispute.

In Texas, each workers compensation insurance carrier is responsible for assigning a classification code to a policyholder in accordance with the workers compensation manuals. If a carrier and policyholder cannot agree on the appropriate code, they can request NCCI's assistance. Requesting NCCI's assistance does not prevent the policyholder or carrier from pursuing any available legal remedies at any time.

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Because workers compensation rules vary between states, clarifying how NCCI's dispute resolution services work in Texas is necessary to avoid confusion about the available remedies. To ensure that workers compensation policyholders and carriers understand their options for classification disputes, TDI worked with NCCI to develop *Item 02-TX-2019*.

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

Findings of Fact

1. NCCI filed *Item 02-TX-2019* with TDI on November 14, 2019, under the workers compensation manual rule filing procedure adopted in Commissioner's Order No. 3142, dated March 21, 2014.
2. *Item 02-TX-2019* clarifies how dispute resolution services work in Texas by:
 - revising Item 8 in *Introduction--Application of Manual Rules* in the *Basic Manual*, regarding dispute resolution;
 - eliminating national *Appendix G--Dispute Resolution Process* in the *Basic Manual* in Texas, including eliminating the appeals board;
 - establishing a Texas Exception to *Appendix G--Dispute Resolution Process* in the *Basic Manual*; and
 - revising the Texas Amendatory Endorsement in the *Forms Manual*.
3. The current dispute resolution process in the *Basic Manual* is voluntary and is not an administrative remedy that must be satisfied before the parties may take their dispute to court. But the way the dispute resolution process is presented in the *Basic Manual*, both in the wording of *Appendix G* and in referring the dispute to an appeals board, may mislead policyholders and carriers about the voluntary and non-binding nature of the process.
4. As a result, TDI determined that the process needed clarification to ensure that policyholders and carriers know that trying to resolve their dispute amicably, with NCCI's help, does not prevent them from asking a court to resolve the dispute at any point.
5. NCCI proposed that the changes in *Item 02-TX-2019* be effective for disputes that are pending with NCCI or are received by NCCI on or after 12:01 a.m. on January 1, 2020.

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6. *Item 02-TX-2019* has been available for public inspection in SERFF and at TDI since the filing date.
7. The filing, including exhibits, is incorporated by reference into this order.
8. On January 21, 2020, TDI published notice of the filing on the TDI website at www.tdi.texas.gov/rules/2019/nccimanual.html and distributed notice of the filing to electronic news subscribers.
9. TDI received no written comments on the filing and no hearing requests by the February 21, 2020, deadline.

Conclusions of Law

1. TDI has jurisdiction over this matter under Insurance Code Article 5.96 and §§ 2051.002, 2051.201, 2052.002, 2053.002, 2053.011, 2053.051, and 2053.053.
2. TDI gave notice in compliance with Commissioner's Order No. 3142. Per Commissioner's Order No. 3142, the Commissioner may issue an order approving the filing, approving the filing with changes, or rejecting the filing.
3. The amendments to the NCCI *Basic Manual* and *Forms Manual* are consistent with Insurance Code Article 5.96 and Chapters 2051, 2052, and 2053.
4. Applying the changes in *Item 02-TX-2019* to new and renewal policies that are effective on or after 12:01 a.m. on June 1, 2020, is reasonable.

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Order

It is ordered that NCCI's filing, *Item 02-TX-2019--Revisions to the Texas Dispute Resolution Process and Texas Amendatory Endorsement*, is approved. The changes in *Item 02-TX-2019* apply to new and renewal policies that are effective on or after 12:01 a.m. on June 1, 2020.

Kent C. Sullivan
Commissioner of Insurance

DocuSigned by:
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By: C77A87C8C21B435...
Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended by:

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