

**TEXAS DEPARTMENT OF INSURANCE
EXEMPT FILING NOTIFICATION UNDER TEXAS INSURANCE CODE
CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96**

Order: Repeal of the *Texas Retrospective Rating Plan Manual*

The commissioner of insurance repeals the rules, factors, values, endorsements, and forms in the *Texas Retrospective Rating Plan Manual (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. The repeal adopts the proposal in TDI staff's August 25, 2015, petition (Reference No. W-0915-04-I), with no amendments.

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.

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 National Council on Compensation Insurance *Retrospective Rating Plan Manual (NCCI Retro Plan)*, or file their own retrospective rating plans with TDI.

Hearing and Comments

TDI published notice of the petition and hearing in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6755). TDI received no comments at the October 22, 2015, hearing, held under Docket No. 2779, and no written comments by the October 26, 2015, deadline.

Justification

This rule repeals 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, or 2) filing their own insurer-specific plans under Insurance Code Sections 2052.002 and 2053.003 for use in Texas.

Using retrospective rating for workers' compensation policies is optional, and there is no requirement for a uniform retrospective rating plan in Texas. Insurers have always been permitted to file their own retrospective rating plans or to 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 is a licensed advisory organization in Texas, the largest provider of workers'

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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.

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. 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.

Because alternatives continue to exist, and because few insurers use the *Texas Retro Plan*, the commissioner expects little impact to insurers or policyholders from repealing the *Texas Retro Plan*. A carrier filing its own plan could still use the *Texas Retro Plan* as a reference for developing its plan, along with updated rating plan parameters, factors, and other plan information.

Statutory Authority

Insurance Code Articles 5.96 and 5.77, and §§1805.054, 1805.055, 2052.002, 2053.001, 2053.003, and 36.001 authorize 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

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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.

Official Action Taken

The commissioner orders that:

- (1) The rules, factors, endorsements, and forms in the *Texas Retro Plan* are repealed 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.

A copy of staff's petition and related exhibits has been on file with the TDI chief clerk since August 25, 2015. The petition and exhibits are incorporated by reference into this order.

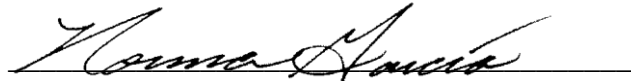
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The commissioner repeals the rules, factors, values, endorsements, and forms in the *Texas Retro Plan* for new and renewal workers' compensation policies written on a retrospectively rated basis with effective dates on and after 12:01 a.m., January 1, 2017, under Article 5.96 of the Texas Insurance Code. Article 5.96 exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001), and 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.

TDI certifies that the repeal of the *Texas Retro Plan* has been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

Issued in Austin, Texas on December 7, 2015.



Norma Garcia, General Counsel
Texas Department of Insurance

The commissioner repeals the rules, factors, values, endorsements, and forms in the *Texas Retrospective Rating Plan Manual* as proposed by TDI staff's August 25, 2015, petition (Reference No. W-0915-04-I) 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 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.



David C. Mattax
Commissioner of Insurance

Commissioner's Order No. **4215**