W-0119-01
ECase 18238

TexasMutual®
Insurance Company

January 28, 2019

Ms. Norma Garcia
Chief Clerk and General Counsel
Texas Department of Insurance
333 Guadalupe St.
Austin, TX 78701

Re: Petition to rescind, in part, Texas Commissioner of Insurance Order No. 2016-4795 to permit continued use of A-rated Classification Code 0923—Domestic Workers—Residences—Payroll Basis

Dear Ms. Garcia:

Texas Mutual Insurance Company (Texas Mutual) files this petition pursuant to Texas Insurance Code, Article 5.96, which permits interested persons to petition the Texas Department of Insurance (Department) with respect to amendments to the uniform manual rules for workers' compensation insurance.

Background

On November 24, 2000, pursuant to a petition by the Department's staff, the Department published notice of proposed amendments to the *Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance* (Manual) to establish a new classification for premium based on payroll and to clarify that Classification Code 0913—Domestic Workers—Residences—Per Capita Basis and Classification Code 0923—Domestic Workers—Residences—Payroll Basis are "A" rated codes. On December 18, 2000, a public hearing was held on the proposal where no comments were received. On January 19, 2001, notice of the final adoption of the proposed amendments to the Manual was published in the *Texas Register*, and the amendments were effective 15 days later.

Texas Mutual's evaluation of the two methods for determining premium for residential domestic employees revealed that using a payroll basis for determining premium would be the most equitable rate structure for its policyholders, and additionally would allow Texas Mutual to charge premium directly corresponding to its exposure. Based on these important business considerations, Texas Mutual began exclusively using Code 0923 to calculate premium for coverage for residential domestic employees. As anticipated, the method allowed Texas Mutual to more accurately and fairly determine an appropriate premium charge. Thus, Texas Mutual has continued to use Code 0923 since that time and it has worked well for Texas Mutual and its policyholders.

However, on February 29, 2016, the National Council on Compensation Insurance (NCCI) filed *Item 01-TX-2016—Elimination of A-Rating Process for Classification and Statistical Codes in NCCI's Manuals* (TDI ECase No. 10765), which was proposed to apply to new and renewal policies effective on and after July 1, 2017. *Item 01-TX-2016* was a filing to eliminate the A-rating process for certain national and state special classification and statistical codes in Texas, including those for domestic employees.

The filing specifically proposed eliminating the "A-rated" Code 0923, effectively removing the ability to rate domestic employee exposure on a payroll basis. At that time, Texas Mutual was unable to determine how the proposed changes would affect policyholders who have employees assigned to Code 0923 because NCCI had not proposed Texas loss costs for Code 0913, had not yet proposed new Classification Code 0908—Domestic Workers—Residences—Part-Time, and the specific information needed to calculate premium on a per capita basis was not available. Texas Mutual submitted comments to the filing requesting that the commissioner not approve the elimination of Code 0923 or in the alternative delay the proposed July 1, 2017 effective date for two years to allow Texas Mutual to determine the impact the change would have on its policyholders.

On November 16, 2016, the Department issued Commissioner's Order No. 2016-4795 approving *Item 01-TX-2016* with changes allowing Code 0923 to continue until the A-rating process sunsets on July 1, 2019. The Department's decision to allow the continued use of Code 0923 until July 1, 2019 has given Texas Mutual additional time to better assess and evaluate the effect that elimination of the code will have on its policyholders.

On November 16, 2017, NCCI filed *Item 01-TX-2017*, which, among other things, revised the classification treatment of domestic employees to be on a per capita basis by type of employee – part-time or full-time. And on July 11, 2018, the Department issued Order No. 2018-5569 approving *Item 01-TX-2017* and establishing Code 0908 for part-time domestic employees, per capita basis.

Specific Change Requested

Texas Mutual requests that the Department rescind, in part, Order No. 2016-4795 to permit continued use of Code 0923 and instead continue to permit the use of Code 0923 (payroll basis) or Code 0913 and 0908 (per capita basis) for residential domestic employees. As explained in the Justification section below, this will allow insurers and their policyholders to continue to benefit from the availability of both rate bases.

Justification

Texas Mutual began using Code 0923 in 2001 when it was adopted by the Department based on several important business considerations. First, because using a payroll basis for determining premium is the most equitable rate structure for its policyholders, and second because a payroll basis for calculating premium allows Texas Mutual to charge the amount of premium that directly corresponds to its exposure. These reasons are still applicable today. In addition, consideration should now be given to historical precedence and the impact a change will have on policyholders, insurers, and systems.

1. **<u>Use of a payroll basis maintains an equitable rate structure for policyholders and avoids wide premium swings.</u>**

Texas Mutual estimates that a change to a per capita basis will result in significant premium adjustments for the majority of Texas Mutual's policyholders purchasing coverage for domestic employees.[1] While the aggregate rate level should remain unchanged, the impact to individual policyholders could be significant enough to cause them to opt out of participating in the workers' compensation system.

Some policyholders – those paying average annual salaries over $14,467 per employee – will experience a decrease in premium. Others – those paying average annual salaries under $14,467 – will experience an increase in premium. While Texas Mutual does not currently capture employee count by class code, it estimates that this would negatively impact approximately 580 of its 1,700 policies that cover domestic employees. Additionally, over 80 percent of those negatively affected would be small policyholders with less than $5,000 in annual premium.

The effect on policyholders, especially small businesses with small amounts of payroll for domestic employees, will be dramatic. Those receiving an increase are estimated to receive an average increase of 33 percent, with some seeing increases of over 300 percent. This added financial burden has the potential to cause small employers to opt out of providing coverage for their employees – a circumstance that is not in keeping with public policy concerns to encourage employers to provide workers' compensation insurance coverage for their employees.[2]

It is also noteworthy that effective July 1,2019, the loss costs for Codes 0908 and 0913 are identical and for the next two to three years NCCI will not have sufficient data to recommend an accurate or equitable rate for these classification codes. Until NCCI has sufficient data to calculate per capita loss costs specific to Code 0908, part-time employees in Texas will be treated in the same way as full-time employees – both at a loss cost of $94, which is an unusual circumstance. For example, in our neighboring states, there is a significant difference in the charges for the two classification codes: in Louisiana, Code 0908 is charged at $103 and Code 0913 at $333; in New Mexico, Code 0908 is charged at $114 and Code 0913 at $399; and in Oklahoma, Code 0908 is charged at $115 and Code 0913 at $443. While this is only a two- to three-year disruption, it is a disruption that is not necessary.

2. **<u>Use of a payroll basis allows Texas Mutual to charge premium that is directly proportional to its expected loss.</u>**

The Texas workers' compensation system provides covered employees with three types of benefits when they are injured on the job – medical care, income replacement, and death and burial benefits. Thus, a significant portion of benefits paid in the workers' compensation system are loss of income benefits.[3] As a rule, a risk's exposure base should be directly proportional to its expected loss. Since income benefits paid to an employee are based on the employee's salary or wage, the amount of payroll is directly proportional to the expected loss, while the number of employees is not.

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[1] With a change to a per capita basis, 1,267 of Texas Mutual's 1,741 policyholders will experience a minimum five percent change in premium.

[2] See attached Appendix for information related to Texas Mutual's calculations and assumptions relied on to demonstrate the impact of per capita pricing for Code 0923, by written premium.

[3] Income benefits are paid if an injured employee loses seven days or more of time at work.

Domestic employees can complete a wide array of tasks, from cleaning a property once a month to living in the household and completing a variety of daily household tasks. As with all classification codes, an employee's risk varies with the amount of work the employee does and the variety of tasks completed. Employee count, even with a part-time distinction, does not delineate between these types of domestic employees. However, employees working more hours or more varied tasks are likely to be paid more through higher wages or wage substitutes (such as the rental value of housing), which would be captured by payroll.

To illustrate, earnings for domestic employees vary greatly. Over 92 percent of Texas Mutual's policyholders pay domestic employees between $20 and $15,000 annually. The remaining eight percent can pay dramatically more – some, for example, paying employees as much as $100,000 annually. If an employee is injured, Texas Mutual will pay a benefit amount corresponding to the employee's wage. This means it will pay a lower amount to an employee in the lower wage range and a significantly higher amount to an employee in a higher wage range. If premium is calculated on a payroll basis, the premium amount will account for the disparity in benefit amount. If premium is calculated on a per capita basis, the premium paid for coverage for each employee will be the same.

3. **<u>A change to a per capita basis would present a logistical burden for Texas Mutual's policyholders.</u>**

An exposure base should be objective and easy to obtain and verify. Changing to a per capita basis for calculation of premium will present a significant burden for Texas Mutual's policyholders providing coverage for their residential domestic employees. Rather than simply providing a total dollar amount of payroll for domestic employees, policyholders will be required to provide much more detailed information, including the number of employees and the weekly hours worked by each employee. This information will be required to be provided when initiating a policy, again at each renewal, and during audits for premium adjustments. Additionally, employee count can vary throughout the year and is much more difficult to verify than is payroll.

In Texas, Texas Mutual is a leading writer of policies providing coverage for domestic employees as most carriers do not write small premium policies for domestic employees. Again, contrary to public policy, the added logistical burden on small business and sole proprietor employers has the potential to cause them to opt out of providing coverage for their employees.

4. **<u>Consideration should be given to historical precedence.</u>**

Payroll has been used as basis for all classification codes in Texas for many years and, in fact, is the exposure base for an overwhelming majority of classification codes in most states. Changing to a per capita basis for this single classification code would be disruptive causing premium swings for policyholders, requiring system changes, and causing historical data to be less useful. Even if a new exposure base is more practical and proportional to loss – which Texas Mutual does not concede for the reasons explained in this petition – consideration should be given to avoiding wide premium swings, significant changes in pricing and rating systems, and significant adjustments to historical data for future analyses.

Use of a payroll basis meets all the above criteria, while use of a per capita basis fails to meet any of them. The burden of such a change should be balanced against any perceived benefit that might be realized from a change, which arguably would be minimal at best. Under these circumstances, a change in exposure base is unwarranted as it would not only be disruptive but would also add no value to Texas policyholders.

For the reasons stated, Texas Mutual has determined that elimination of Code 0923 would have an adverse and disproportionate impact on small policyholders, would not allow for assessment of risk exposure proportional to expected losses, would create a logistical burden for policyholders and would create system-wide disruption. Therefore, Texas Mutual respectfully requests that the Department approve this petition and rescind portions of Order No. 2016-4795 that effectively eliminate A-rated Code 0923. Because loss cost data for Code 0923 is not available at this time, Texas Mutual anticipates that the code would remain A-rated for a period of time. Texas Mutual is committed to working with the Department and NCCI to develop and gather data sufficient to produce advisory loss costs for Code 0923.

Please contact me with any questions you may have or additional information you may need to evaluate the relief requested by this petition.

Thank you for your consideration.

Sincerely,

Barbara K. Salyers
Director Legislative and Regulatory Affairs

cc: ✓The Honorable Kent Sullivan, Commissioner of Insurance
Terri Robinson, State Relations Director, National Council on Compensation Insurance

Appendix

Impact of Per Capita Pricing for Classification Code 0923 - By Written Premium Size					
Premium Size	Policy Count	0923 Payroll	0923 Employees	Policies w/Increase	% of Policies w/Increase
0 - 0.5K	274	2,822,729	354	187	68%
0.5 - 1K	446	12,474,014	634	129	29%
1 - 5K	625	41,090,103	1,285	168	27%
5 - 15K	253	20,165,658	538	71	28%
15 - 25K	57	8,031,130	172	7	12%
25 - 50K	37	5,633,206	174	6	16%
50K+	49	7,685,020	235	10	20%
Total	1,741	97,901,860	3,392	578	33%

Notes:

Texas Mutual does not audit employee count; therefore, the actual number of employees could vary from the number of employees referenced in the above chart.

Texas Mutual used average wages to allocate employees among the ranges used in the chart; however, the individual wage per policyholder could vary significantly. Therefore, the policyholder level increases and decreases reflected in the chart could be even more significant than projected.