

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

**ADOPTION OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE
STATISTICAL PLAN FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY
INSURANCE WITH TEXAS EXCEPTIONS**

The commissioner of insurance adopts the *National Council on Compensation Insurance (NCCI) Statistical Plan for Workers Compensation and Employers Liability Insurance* with Texas exceptions, as proposed by the May 30, 2014, TDI staff petition (Reference No. W-0514-03-I), with no amendments, to continue the process of Texas becoming an NCCI state for workers' compensation purposes; help align workers' compensation statistical data reporting requirements between Texas and other NCCI states; and replace the outdated *Texas Workers' Compensation Statistical Plan (Texas Stat Plan)* with a plan that provides more detailed information, particularly with regard to workers' compensation losses.

Hearing and Comments

TDI published notice of the proposal and hearing in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4685). One commenter made a written comment, as well as a public comment at the June 25, 2014, hearing, held under Docket No. 2766. One item included in his written comment, which pertained to available deductible options, was beyond the scope of this rule. Another commenter filed a written comment during the comment period.

The two comments on this rule supported the adoption of the *NCCI Stat Plan* with Texas exceptions as a logical, essential step in TDI's initiative toward making workers' compensation insurance regulation in Texas more efficient by making Texas an NCCI state. As an NCCI state, NCCI will administer certain workers' compensation functions in Texas that TDI is not statutorily required to perform. A commenter stated that the proposal was consistent with Commissioner's Order No. 3142, dated March 21, 2014, which adopted the *NCCI Basic Manual* with Texas exceptions and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. TDI appreciates the commenters' support, and continues to work hard to ensure the best and most efficient administration of the Texas workers' compensation classification and premium calculation system.

Justification

The commissioner has determined that adopting the *NCCI Stat Plan* with Texas exceptions is necessary to further Texas's transition toward becoming an NCCI state. 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. As of February 2014, there are 36 states plus the District of Columbia that are NCCI states, 10 independent states, including Texas, and four monopolistic states.

All NCCI manuals are currently available on the NCCI website to subscribers and affiliates of NCCI. The Texas exceptions to the *NCCI Stat Plan* will also be available through the same system. 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.

Texas carriers will benefit from having more uniform statistical data reporting requirements among states. TDI will benefit by having more detailed information to use in regulating the workers' compensation market. Carriers and policyholders will also benefit from NCCI's technical expertise, infrastructure, and support.

This rule adopts the *NCCI Stat Plan* and the Texas exceptions that amend the *NCCI Stat Plan* to comply with unique Texas statutory and rule requirements. NCCI will format the final Texas exceptions to match the style of its other manuals.

The *Texas Stat Plan* requirements are outdated and result in less detailed data reported in Texas than in most other NCCI states. The *Texas Stat Plan* contains minimum statistical reporting requirements for exposure, premium, and loss data for each workers' compensation policy a carrier issues. The *NCCI Stat Plan* requires carriers to report more detailed information than the current *Texas Stat Plan*. In spite of the minimal statistical reporting requirements in the *Texas Stat Plan*, most carriers are voluntarily reporting their Texas statistical data in an expanded format, which satisfies the *NCCI Stat Plan* statistical reporting requirements in other states.

Adopting the *NCCI Stat Plan* with the Texas exceptions will help align workers' compensation statistical data reporting requirements between Texas and other NCCI states, and will provide more detailed information, particularly about workers' compensation losses. Conforming the statistical reporting requirements in Texas to those used in the majority of other states enhances efficiency. Because the reporting requirements in the *NCCI Stat Plan* would provide more data, adopting the *NCCI Stat Plan* will enhance TDI's ability to regulate the Texas workers' compensation system.

In addition to requiring more detailed information, particularly with regard to losses, there are several new requirements in the *NCCI Stat Plan* with Texas exceptions that are not part of the

current *Texas Stat Plan*. The main differences between the *NCCI Stat Plan* and the *Texas Stat Plan* reporting requirements pertain to:

- electronic filing of statistical data;
- fraudulent claims;
- noncompensable claims;
- accidents with one claimant and reportable losses under both workers' compensation and employers' liability;
- deductible options and deductible credits;
- the number of subsequent reports required for updating losses;
- Nonextraordinary Loss Events;
- Extraordinary Loss Events;
- updated pension tables to use in setting case reserves of incurred indemnity amounts for certain workers' compensation claims;
- an expanded list of fees and expenses included as part of the Allocated Loss Adjustment Expense and the Unallocated Loss Adjustment Expense; and
- identification of whether a claim was administered by a workers' compensation certified health care network.

Many carriers are already complying with the expanded reporting requirements, rather than submitting only the minimum information that the *Texas Stat Plan* requires. The carriers reporting in the expanded format in the *NCCI Stat Plan* would continue to report in that format after the commissioner adopts the *NCCI Stat Plan* with the Texas exceptions. The main differences listed above may require carriers to report additional data or to report data in a different way.

The 10 Texas carriers that are not currently using the expanded reporting format filed 28,245 unit reports in 2013, which is only about 12 percent of the total 241,441 Texas units filed in 2013. NCCI has already contacted those carriers to inform them of the proposed change. One of the 10 Texas carriers not currently using the expanded reporting format filed about 22,000 unit reports in 2013. That carrier already has the capability to report in the expanded format. Another of the 10 Texas carriers not currently using the expanded reporting format filed about 4,900 units in 2013. NCCI reports that that carrier is scheduled to begin using the expanded reporting format this fall. The remaining eight carriers not currently reporting in the expanded format reported a combined total of about 1,600 units. Carriers have the option of entering the unit reports using NCCI's online system, which is available at no cost to the carrier. Carriers choosing this method avoid system changes and the associated costs.

Statutory Authority

Insurance Code Article 5.96 and §§2053.101, 1805.054, 1805.055, and 36.001 authorize 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, 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.

Section 2053.101 requires the commissioner to develop, and allows the commissioner periodically to modify, reasonable statistical plans for workers' compensation insurance. The total loss and experience of all insurance companies must be made available at least annually in the form and detail necessary to assist in determining whether an insurance company's rates meet the standards imposed under Insurance Code §2053.002.

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 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.

With the adoption of the *NCCI Stat Plan* with Texas exceptions, 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 nonstandard forms and endorsements; 3) determining hazards by classification; 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.

Official Action Taken

The commissioner adopts the *NCCI Stat Plan* with Texas exceptions, as proposed, with no changes.

The commissioner orders that:

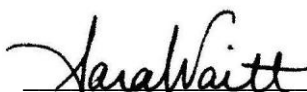
- (1) The *NCCI Stat Plan* with Texas exceptions is effective for reporting statistical data for Texas workers' compensation policies with an effective date on or after 12:01 a.m., January 1, 2015.
- (2) The *Texas Stat Plan* will remain in effect for reporting statistical data only for Texas workers' compensation policies with an effective date before 12:01 a.m. on January 1, 2015.
- (3) Any proposed future revisions to NCCI's manuals, including the *NCCI Stat Plan*, will be considered under either the procedure established in Insurance Code Article 5.96, or the procedure established in Commissioner's Order No. 3142, dated March 21, 2014: 1) NCCI makes a filing; 2) TDI publishes notice of the filing on the TDI website and distributes notice of the filing to subscribers to TDI's electronic news, 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.

A copy of the full text of the staff petition and related exhibits has been on file with the TDI chief clerk since May 30, 2014. The petition and exhibits are incorporated by reference into this order.

The commissioner adopts the *NCCI Stat Plan* with Texas exceptions 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 adoption of the *NCCI Stat Plan* with Texas exceptions, has been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

Issued in Austin, Texas, on July 29, 2014.



Sara Waitt, General Counsel
Texas Department of Insurance

3455

Adoption of the *NCCI Stat Plan* with Texas Exceptions

Page 6 of 6

The commissioner adopts the *National Council on Compensation Insurance (NCCI) Statistical Plan for Workers Compensation and Employers Liability Insurance* with Texas exceptions, as proposed by the May 30, 2014, TDI staff petition (Reference No. W-0514-03-I) for reporting statistical data for Texas workers' compensation policies with an effective date on or after 12:01 a.m., January 1, 2015. The *Texas Workers' Compensation Statistical Plan* will remain in effect for reporting statistical data only for Texas workers' compensation policies with an effective date before 12:01 a.m. on January 1, 2015. Any proposed future revisions to NCCI's manuals, including the *NCCI Stat Plan*, will be considered under either the procedure established in Insurance Code Article 5.96, or the procedure established in Commissioner's Order No. 3142, dated March 21, 2014.

A handwritten signature in cursive script, reading "Julia Rathgeber", written over a horizontal line.

Julia Rathgeber

Commissioner of Insurance

Commissioner's Order No. 3455