

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

The commissioner of insurance adopts 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*, as proposed by the December 30, 2013, TDI staff petition (Reference No. W-1213-01-I), with one amendment, to allow NCCI to assume certain workers' compensation functions in Texas.

Hearing and Comments

TDI published notice of the proposal and hearing in the January 10, 2014, issue of the *Texas Register* (39 TexReg 221). The hearing was originally scheduled for January 24, 2014, but was postponed due to inclement weather. TDI rescheduled the hearing for February 18, 2014, and published notice of the rescheduled hearing in the February 7, 2014, issue of the *Texas Register* (39 TexReg 779). TDI received 12 written comments and seven public comments at the February 18, 2014, hearing, held under Docket No. 2762.

The comments received were either supportive of, or not opposed to, the adoption of the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*; and of the Texas transition from being an independent state to being an NCCI state. As an NCCI state, NCCI will administer certain workers' compensation functions in Texas, which TDI is not statutorily required to perform. 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.

Nearly all of the commenters requested an effective date of October 1, 2014, rather than an effective date of June 1, 2014, as the TDI staff petition proposed. Several commenters requested a permissive effective date of June 1, 2014, and a mandatory effective date of October 1, 2014. TDI agrees that a permissive effective date of June 1, 2014, and a mandatory effective date of October 1, 2014, would reasonably allow carriers time to update their systems. It would also permit carriers that have already updated their

systems to use the adopted *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, for policies with an effective date on or after June 1, 2014. All carriers would be required to use the adopted *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, for policies with an effective date on or after October 1, 2014.

One commenter expressed concern about whether, at some point in the future, costs to access information from NCCI regarding loss costs, relativities, and classification codes would increase to prohibitive levels for small employers. TDI appreciates the comment. NCCI's costs have not increased significantly over at least the past 10 years and, based on that historical information and on information NCCI has provided, TDI does not expect NCCI's costs to increase to prohibitive levels in the future. TDI will monitor costs and welcomes future communication from carriers and policyholders if problems arise.

Justification

The commissioner has determined that adopting the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* is necessary to allow NCCI to assume certain workers' compensation functions in Texas that TDI is not statutorily required to perform. The Texas exceptions to the NCCI rules and forms are necessary to preserve the rules that are unique to Texas and to make the transition to an NCCI state as seamless as possible for policyholders.

NCCI is the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation. It is a licensed advisory organization in Texas, and is the workers' compensation statistical agent for the state. 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.

When Texas becomes an NCCI state, Texas carriers and policyholders will benefit from NCCI's technical expertise, infrastructure, easy-to-use electronic manuals, inspection services, dispute resolution process, and training programs. NCCI state status will enhance efficiency for Texas policyholders operating in other NCCI states, and carriers writing workers' compensation coverage in multiple NCCI states, by allowing them to have more consistent rules and forms and eliminating unnecessary government

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involvement. Additionally, transferring the responsibility for administrative functions to NCCI, where possible, will allow TDI staff to focus more on substantive issues in workers' compensation insurance.

Adopting the cited NCCI manuals and exceptions allows NCCI to operate in Texas by: 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) assigning classification codes to businesses on request; 4) on request and for a fee, inspecting businesses to determine the correct classifications; 5) responding to telephone and written inquiries regarding workers' compensation classification and premium calculation; and 6) participating in an appeals panel, if necessary, to resolve disputes between carriers and policyholders.

The *NCCI Basic Manual* and the Texas exceptions incorporate the Texas classifications currently in effect. Texas will retain its current classifications and will not change to the national classifications used in most NCCI states.

The Texas exceptions include a more formal dispute resolution process than TDI currently uses for disputes about rules or classifications that cannot be resolved between the policyholders and carriers. Participants in the dispute resolution process will not be required to retain counsel. However, participants must appear in person before the appeals panel, unless all participants agree to appear by telephone or other electronic means.

The Texas exceptions update the premium discount table that is currently available for carriers to use for premiums for policyholders who meet the eligibility requirements. The Texas exceptions also 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 replace the aggregate deductible and the per accident/aggregate deductible options with the per claim deductible and the medical-only deductible options. This eliminates two options that are rarely chosen for Texas workers' compensation

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policies and adds two other options that are used 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. 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. In addition, TDI will send information to carriers about the filing requirements to adopt NCCI's Advisory LERs.

With the adoption of the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, the commissioner adopts 62 endorsements and forms and discontinues two endorsements for the two deductible options that will no longer be available. Of the 62 endorsements and forms approved:

- 32 are identical to those in the *Texas Basic Manual*
- five are retrospective rating endorsements identical to those previously filed by NCCI and approved by TDI
- 18 are adopted with only minor editorial changes to the currently approved ones
- two are endorsements that already exist in the *Texas Basic Manual* that have been amended to clarify language and update statutory references
- two are new to Texas and necessary to implement the added deductible options
- two are new to Texas and necessary to clarify and standardize practices that are already common in Texas, and
- one is new to Texas and necessary to give notice of a possible pending law change to the federal terrorism law.

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*, 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

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The commissioner adopts the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, as proposed, with the following change: in the Texas exceptions, the language in Section D, number 3 of the Dispute Resolution Process is amended to allow participation in the appeals panel by telephone or other electronic means, provided that all parties agree. Additionally, carriers are allowed to use the *NCCI Basic Manual* with Texas exceptions and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* for policies with an effective date on or after June 1, 2014, and must use them for policies with an effective date on or after October 1, 2014.

The commissioner orders that

- (1) The *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, may be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014; but must be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., October 1, 2014.
- (2) The rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* will continue to be in effect for policies with an effective date before 12:01 a.m., October 1, 2014. Carriers may use the adopted *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* for policies with an effective date on or after 12:01 a.m., June 1, 2014.
- (3) The rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* will expire at 12:01 a.m., October 1, 2015.
- (4) The Experience Rating Plan contained in the *Texas Basic Manual* will continue in force until TDI adopts the *NCCI Experience Rating Plan* with Texas exceptions, independent of the rules, classifications, endorsements, and forms in the *Texas Basic Manual*.
- (5) Any proposed future revisions to NCCI's manuals will be considered under either the procedure established in Insurance Code Article 5.96, or by the following

procedure: 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 December 30, 2013. The petition and exhibits are incorporated by reference.

The commissioner adopts the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* 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 Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* have been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

Issued in Austin, Texas, on March 21, 2014.

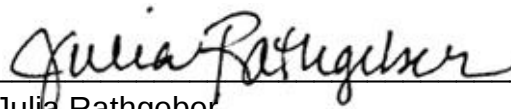


Sara Waitt, General Counsel
Texas Department of Insurance

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The commissioner orders that 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*, as proposed by the December 30, 2013, TDI staff petition (Reference No. W-1213-01-I) and amended as outlined above, may be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014; but must be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., October 1, 2014.

A handwritten signature in dark ink, appearing to read "Julia Rathgeber", is written over a horizontal line.

Julia Rathgeber
Commissioner of Insurance

Commissioner's Order No. **3142**