



**Independent
Insurance
Agents of Texas**

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TEXAS DEPT. OF INSURANCE
SERVICE CENTER

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

via email: norma.garcia@tdi.texas.gov & Hand Delivered

Re: Petition for Workers Compensation Experience Rating Plan Manual Rule Amendment; Negotiated Experience Modifiers, NCCI Manual, Texas State Rule Exception, Rule 4-C-4

Dear Ms. Garcia,

This petition is filed on behalf of the Independent Insurance Agents of Texas (IIAT), an association with over 1,400 independent agencies doing business in Texas who are members of IIAT. IIAT files this petition pursuant to Article 5.96(b) of the Insurance Code, which permits interested persons to petition the agency with respect to manual rules for workers compensation insurance. IIAT would also request that the Commissioner hold a hearing on this petition pursuant to Article 5.96(d) of the Texas Insurance Code.

Background, Specific Change Requested and Reasons for This Petition.

Until 2015, Texas promulgated its own workers compensation experience rating plan. As a result of the workers compensation crisis in the 1980's, Texas added a provision that permitted companies and agents to negotiate experience modifiers for an employer. The TDI approved a petition to adopt the NCCI Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (sometimes referred to as "NCCI Manual" or "NCCI Experience Rating Plan Manual") to be effective July 1, 2015. As part of the transition to the NCCI Manual, the NCCI Experience Rating Plan Manual included Texas State Rule Exception, Rule 4-C-4 that permitted the use of negotiated experience mods through July 1, 2018. IIAT understands that other states that have adopted the NCCI Manual do not have this exception.

IIAT would request that Rule 4-C-4 be amended to permit the use of negotiated experience modifiers through July 1, 2019.

There are several reasons this amendment is needed at this time. These include the following:

1. The current rule allowed for a 3 year continuation of negotiation of E-Mods until July 1, 2018, although calculation of E-Mods is a 3 year cycle. Also, at the time this was adopted, this appeared to be an adequate amount of time in order to educate

employers, insurers and agents of this change. IIAT believes, in hindsight, that more time is needed to adequately educate participants in the Texas workers compensation system of this change. Despite the laudable efforts by NCCI and large insurers, such as Texas Mutual, to educate stakeholders on the use of experience modifiers to compare contractor safety, it is apparent that certain types of industries continue to use the experience modifier as a disqualifier to work. IIAT's investigation shows that many employers in the petrochemical, oil and gas, heavy construction, road construction and some contractors for governmental projects continue to require an experience modifier of 1.00 or less in order to perform work. This could apply to both general and subcontractors. It seems that few of these industries had seen this deadline as a possible disruptor of current and future projects. Now that the deadline is upon us, we have brought this to their attention and believe that we have their support in requesting an extension.

2. IIAT understands that, based on NCCI data, only .3% of all Work Comp policies currently have a negotiated experience modifier. This fact demonstrates that extending this rule should not be problematic to Work Comp insurers willing to allow the use of a negotiated modifier for one additional year. The potential for disruption of business for an existing employer could be significant and we feel preventable.
3. Another reason to extend this rule is the fact that formula changes by NCCI in the way an E-Mod is calculated can have material changes to an individual employer. For example, NCCI made a material change in 2015 by increasing the split point in their formula in Texas from \$5,000 to \$15,000. This change was stair stepped in other states over 3 years but the change in Texas was made all at once. This resulted in some dramatic increases/decreases at the individual employer level, without any real changes in underlying safety.¹ IIAT is also concerned that safe companies that have a 1.00 or lower modification could see their mod move over 1.00 due only to a formula change by NCCI. With that said, it is clear that until businesses end the practice of 1.00 mod being the sole determiner of safety and ability to work, this potential for disqualification will continue.
4. Texas is the model state for Workers Compensation in the country. Insurance companies' rates continue to be very competitive while benefits have been improved and we have more and more Work Comp writers aggressively seeking business in Texas. Price competition itself should result in lower premiums and when compared against claim costs that may artificially impact an experience modifier for particular employers.
5. There are other reasons why an individual employer may need to continue to use a negotiated modifier relating to the delays and complexity in the formula used to calculate a modifier. For example, reserve changes on open claims can sometimes

¹ See, Texas Mutual Article 2016, "The Top Ten Reasons Why Experience Mods Don't Necessarily Equate to Safety", by Steve Math, Sr. VP of Underwriting at Texas Mutual.

change dramatically from year to year causing an e-mod to be inappropriately too high or too low; subrogation recoveries may be slow in working into the formula; and technology and safety improvements resulting decreasing claim frequency may cause some employers or contractors, even with no losses, to see an increase in e-mods.²

6. Finally, and possibly the most compelling reason for extending this date, is to give the legislature time to review this issue and determine if there is any reason to provide the Department and NCCI with a clear direction on this subject. Other states have taken action to address the use of 1.00 mods as the sole determiner of ability to work and we should do the same.

IIAT appreciates your review of this important issue and hope the Department will approve this petition and amend the rule as requested. Please contact me if you have any questions or need additional information.

Sincerely yours,



Lee Loftis
IIAT Governmental Affairs Director

cc: NCCI
The Honorable Kent Sullivan, Commissioner of Insurance

² Supra.