

February 25, 2015

WC Bulletin No. 2015-06

To: Persons Interested in Workers' Compensation Issues

From: Steve Nichols, Manager, Workers' Compensation Services

Re: 2015 1st Quarter Workers' Compensation Regulatory Update

This bulletin is intended to provide Insurance Council of Texas members with a quarterly update on Texas Department of Insurance (TDI) and TDI Division of Workers' Compensation regulatory activities.

Executive Summary

This bulletin includes an update on the following regulatory topics:

- (1) Workers' Compensation Direct Written Premium and Quarterly Experience as Reported by TDI – See [Page 1](#) of the bulletin;
- (2) Recent NCCI Filings Related to Workers' Compensation Rate Manual, Forms Manual, and Loss Costs/Experience Plan – See [Pages 2 through 4](#) of the bulletin;
- (3) Workers' Compensation Enforcement Update – See [Pages 4 and 5](#) of the bulletin;
- (4) DWC Monitoring and Regulation Audits Update – See [Page 5](#) of the bulletin;
- (5) Workers' Compensation Complaints; - See [Pages 5 and 6](#) of the bulletin; and
- (6) Workers' Compensation Rules Update – See [Pages 6 through 8](#) of the bulletin.

Workers' Compensation Direct Written Premium and Quarterly Experience

There were 90 groups, 274 insurance companies with direct written premium for Workers' Compensation in the third quarter of 2014, as compared to 95 groups, 286 companies, in the third quarter of 2013. See Page 24 of TDI's [3rd Quarter edition](#) of the *Quarterly Legislative Report on Market Conditions*.

A list of the top 25 groups for direct written premium based on a sum of the most recent four quarters can be found on [page 24](#) of the *Quarterly Legislative Report on Market Conditions*.

TDI reported \$963,813,648 of direct written premium for 4 quarters ending September of 2014. TDI also reported the following quarterly experience for the 3rd quarter of 2014:

- (1) Premiums on Policies Written – \$651,661,866;
- (2) Direct Written Premium – \$695,477,386; and
- (3) Direct Losses Paid – \$262,406,870.

See [page 25](#) of the *Quarterly Legislative Report on Market Conditions*.

NCCI Filings Related to Workers' Compensation Rate Manual, Forms Manual, and Loss Costs/Experience Plan and Insurance Commissioner's Action on TDI Staff Petitions

NCCI Filing Item Number 02-TX-2014

On April 1, 2014, National Council on Compensation Insurance (NCCI) filed a request to amend the *NCCI Basic Manual* and the *NCCI Forms Manual*. The [Notice of Filing](#) is available on TDI's website.

NCCI's filing updates statutory references and form language in the *NCCI Basic Manual* and *NCCI Forms Manual*, eliminates the per passenger seat surcharge, and requires that aircraft losses be reported to the applicable classification code instead of to Statistical Code 0088.

On August 20, 2014, Insurance Commissioner Julie Rathgeber [approved](#) NCCI's filing for policies with an effective date on or after 12:01 a.m., January 1, 2015.

NCCI Filing Item Number 03-TX-2014

On April 1, 2014, the National Council on Compensation Insurance (NCCI) filed a request to amend the *NCCI Retro Manual* and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. The [Notice of Filing](#) is available on TDI's website.

NCCI's filing updates statutory references and form language in the *NCCI Retro Manual* and *NCCI Forms Manual*; eliminates the per passenger seat surcharge premium to harmonize with *Item 02-TX-2014*; requires that aircraft losses be reported to the applicable classification code, instead of to Statistical Code 0088; deletes an obsolete reference; and excludes fully fraudulent losses, non-compensable losses, losses from the non-ratable element codes, and losses resulting from the application of the terrorism provision from incurred losses used in retrospective rating.

On August 20, 2014, Insurance Commissioner Julie Rathgeber [approved](#) NCCI's filing for policies with an effective date on or after 12:01 a.m., January 1, 2015.

Commissioner's Order No. 3455 Adopting the NCCI Stat Plan

On July 29, 2014, the commissioner issued [Commissioner's Order No. 3455](#), which adopted the *NCCI Stat Plan* with Texas exceptions. This required carriers to follow the *NCCI Stat Plan* in reporting statistical data with more detailed information, particularly with regard to workers' compensation losses, and further advanced Texas in the process of being an NCCI state.

TDI Staff Petition No. W-0914-07-I Seeking Adoption of NCCI's Experience Rating Plan

On September 16, 2014, TDI Staff filed a [petition](#) seeking the adoption of NCCI's *Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (NCCI ER Plan)* with Texas exceptions.

Adopting the *NCCI ER Plan* with Texas exceptions is the last major step in Texas' transition to becoming a NCCI state status for workers' compensation purposes. The *NCCI ER Plan* makes experience rating more responsive to individual risk experience by broadening the distribution of experience rating modifications.

Most risks will experience changes in their experience rating modifications that are very similar to the changes they experience in a typical annual update. The small number of risks that move from a credit modification to a debit modification may be able to negotiate their modifications downward, as the negotiated modification rule will still be allowed until July 1, 2018.

Substantive differences between the *Texas ER Plan* and the proposed *NCCI ER Plan* include an experience rating adjustment in NCCI's experience rating modification formula that produces experience rating modifications that appropriately reflect differences between risks; changes to the split point, with corresponding updated weights, ballasts, and claim limitations; annual updates to those and to the expected loss rates and discount ratios; a maximum debit modification; and a three-year transition period to eliminate negotiated experience rating modifications. The *NCCI ER Plan* also incorporates several provisions that are either entirely new to Texas or that differ from provisions that exist in the *Texas ER Plan*. Those changes are not expected to affect premiums.

Commissioner of Insurance, Julia Rathgeber, held a hearing on October 23, 2014 at the Texas Department of Insurance's offices located in the William P. Hobby Jr. State Office Building in Austin, Texas, to take action on the staff's petition.

Written comments on the petition and any associated exhibits were required to be filed with TDI no later than November 3, 2014.

On December 5, 2014, Commissioner Rathgeber [adopted](#), with an effective date of July 1, 2015, the *National Council on Compensation Insurance (NCCI) Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (NCCI ER Plan)* with Texas exceptions, with no amendments.

Note: On December 31, 2013, TDI staff filed a [petition](#) requesting that Insurance Commissioner Rathgeber adopt NCCI's Basic Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI Forms Manual. Commissioner Rathgeber [adopted](#) NCCI's Basic Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the NCCI Forms Manual with a permissive effective date of June 1, 2014, and a mandatory effective date of October 1, 2014.

NCCI Proposed Decreased Workers' Compensation Loss Costs in Texas; TDI Accepted Filing

On September 30, 2014, NCCI delivered a workers' compensation loss cost filing to the Texas Department of Insurance. Based upon NCCI's most recent available data, the loss cost filing includes a proposal for an overall average workers' compensation loss cost level change of -10.9% to become effective July 1, 2015.

NCCI shared the following key observations from the review of the data that has prompted the loss cost filing:

- The experience period used in the filing is Policy Years 2011 and 2012. Texas continues to report an improvement in the loss experience.
- Frequency has declined for a second year in a row.

- Indemnity average cost per case in excess of wage growth increased at the latest point.
- Medical average cost per case in excess of wage growth has been relatively stable in recent years.

NCCI has provided ICT with the following information regarding the loss cost filing:

Loss Cost Filing Components	Impact
Due to the Change in Experience and Trend	-8.7%
Due to Change in Benefits	+0.1%
Due to Change in Loss Adjustment Expenses	-2.5%
Overall Loss Cost Level Change	-10.9%

Source: National Council on Compensation Insurance, September 30, 2014

If accepted, NCCI has reported that the overall average loss cost impact at an industry group level would be as follows:

Industry Group	7-1-2015 Filing
Manufacturing	-9.6%
Contracting	-9.7%
Office and Clerical	-14.3%
Goods and Services	-11.4%
Miscellaneous	10.5%
Total	-10.9%

Source: National Council on Compensation Insurance, September 30, 2014

The Texas Department of Insurance accepted NCCI's July 1, 2015, Loss Cost Filing on November 25, 2014.

Workers' Compensation Enforcement Update

On January 23 2015, Commissioner of Workers' Compensation Ryan Brannan [announced](#) final disciplinary actions taken by the Division of Workers' Compensation (DWC) in 2014. The final actions include administrative penalties ordered against insurance carriers, employers and health care providers in the workers' compensation system.

During Calendar Year 2014, the Commissioner of Workers' Compensation ordered administrative penalties totaling \$2,238,845 against system participants. The penalties include \$2,086,395 in fines ordered against insurance carriers, \$106,450 in fines ordered against health care providers, \$45,000 in fines ordered against other entities and \$1,000 in fines ordered against employers.

Violations of the Texas Labor Code and related rules by insurance carriers cited in recent orders include failing to timely pay income benefits to an injured employee, failing to timely pay a medical bill, and retrospectively reviewing the medical necessity of a preauthorized medical service or treatment.

Violations cited in orders naming health care providers include administering unreasonable or medically unnecessary treatment or services and failing to adequately assess and monitor injured employees when prescribing opioids.

Violations cited in orders naming other entities include adjusters performing utilization reviews and issuing medical necessity denials without allowing the health care provider a reasonable opportunity to discuss the clinical basis for a denial of preauthorization with the appropriate doctor or health care provider performing the review prior to the issuance of a preauthorization or concurrent review denial.

A significant number of DWC enforcement actions taken against insurance carriers in 2014 resulted from “errors” associated with [Electronic Data Interchange](#) (EDI) medical state reporting data. DWC has reported that they are in the process of finalizing enforcement actions associated with EDI medical state reporting data “errors.”

Summaries of disciplinary actions are available on the TDI [website](#). Specific order summaries can be viewed by [searching](#) by the subject of the order on the TDI website.

DWC Monitoring and Regulation Audits Update

The DWC recently [announced](#) that performance audits of several insurance carriers on the accuracy of payments of Lifetime Income Benefits (LIBs) and Death Benefits (DBs) revealed underpayments on 64 claims totaling over \$511,000.

The audits, which were conducted as part of the DWC’s [2015 Audit Plan](#), resulted in the payment of the additional benefits owed by the insurance carriers.

Common compliance errors discovered in the performance audits that contributed to the underpayment of benefits included:

- Failure to pay 75% of average weekly wage;
- Failure to obtain a complete wage statement;
- Failure to properly calculate average weekly wage; and
- Failure to include non-pecuniary wages in average weekly wage.

The Commissioner of Workers’ Compensation, Ryan Brannan, has announced that the audit results indicate that there is a need for the DWC to continue conducting accuracy of payment of benefits performance audits.

Workers’ Compensation Complaints

Teresa Carney, the DWC’s Director of System Monitoring & Oversight, provided an update on complaints received during Calendar Year 2014 and the actions taken by the DWC on the complaints. Carney reported that the DWC received 5,322 complaints during Calendar Year 2014. She noted that the DWC received an average of 440 complaints per month.

Complaint Determinations and Case Dispositions				
Determination	Total	Closed with Education Letter Or No Action	Referred to Enforcement	Closed with Warning Letter
Confirmed Complaint	987	80	328	579
Closed, To be Monitored	1,123			
Not Confirmed	1,533			

Source: Texas Department of Insurance's Division of Workers' Compensation, January 2015

Calendar Year 2014 workers' compensation insurance carrier complaint information can be found on the DWC website at <http://www.tdi.texas.gov/wc/pbo/documents/cy14scores.pdf>.

Workers' Compensation Rules Update

The Division of Workers' Compensation (DWC) has wrapped up its rule-making activities and will not propose any new rules until after the 2015 legislative session. The Texas Department of Insurance is in the process of adopting amended Independent Review Organization (IRO) rules.

Texas Department of Insurance Rule-Making Activities

Informal Draft Chapter 12 Independent Review Organization Rules

The Texas Department of Insurance published informal draft amendments to the Chapter 12 Independent Review Organizations (IRO) rules. The bulk of the rule changes deal with the TDI application, review, certification, and recertification processes for IROs. The informal draft rules also make changes to the personnel and credentialing rules. The informal draft rules also implement provisions of [House Bill \(HB\) 2645](#) that was passed during the 2013 regular session of the Texas Legislature.

HB 2645 changed the certification requirements for independent review organizations and require the Commissioner of Insurance to appoint an advisory committee to advise the Texas Department of Insurance (TDI) on changes to be made to the rules and processes, at a minimum of once a year.

A detailed analysis of the bill, prepared by its author, Rep. Chris Turner (D-Arlington), is available on the Texas House of Representative's [website](#).

Rule 12.403, which establishes fees that are to be paid to IROs by utilization agents and other payors, is the only rule that directly impacts insurers and utilization review companies.

The IRO fees are structured into two tiers. Tier one fees are for independent review of medical or surgical care rendered by a doctor of medicine or doctor of osteopathy. The current Tier one fee is \$650. Tier two fees are for the independent review of health care services rendered in the specialties of podiatry, optometry, dental, audiology, speech-language pathology, master social

work, dietetics, professional counseling, psychology, occupational therapy, physical therapy, marriage and family therapy, chiropractic, and chemical dependency counseling, and any of their subspecialties. The current Tier two fee is \$460.

Workers' compensation healthcare network, disputes involving preauthorization, concurrent, or retro-spective medical necessity payment of the IRO review fee by the insurer must be made within 15 days after receipt of an invoice from the IRO.

In disputes involving preauthorization or concurrent review, or an employee reimbursement dispute, the insurer must remit payment to the assigned IRO within 15 days after receipt of an invoice from the IRO.

In non-network retrospective medical necessity disputes the requestor (usually a physician, non-physician health care provider, or health care facility) must remit payment of the IRO fee to the IRO within 15 days of receipt of an invoice from the IRO. If the requestor prevails after the IRO review, the responding party (usually the insurer) must reimburse the requestor the amount paid for the IRO review not later than 15 day after the IRO decision is rendered. Reimbursement of the IRO review fee is required even if the decision of the IRO is appealed by the responding party.

The injured employee is never required to pay for any part of an IRO review. Insurers are required, by rule, to pay the IRO review fee when the injured employee is the requestor in medical necessity disputes associated with proposed health care for which preauthorization has been denied.

Information about the review of workers' compensation medical necessity disputes by an IRO can be found on the DWC's [website](#). The DWC rule regarding the medical dispute resolution process by IRO for medical necessity disputes is available [here](#).

The IROs are seeking a 43 percent increase for the two-tier IRO fees. I was also told that some IROs are seeking \$1,500 for reviews of life-threatening medical conditions and injuries. The primary reason IROs are requesting an increase of the IRO fees is that the number of workers' compensation medical necessity disputes have dropped dramatically. IROs are not receiving the anticipated number of medical necessity disputes that was projected by TDI when the rules were last amended in 2010. TDI had anticipated a spike in the number of workers' compensation medical necessity disputes as a result of the implementation of the DWC's Closed Pharmacy Formulary. The anticipated increase in disputes regarding prescription drugs did not materialize.

The American Insurance Association, Insurance Council of Texas, Property Casualty Insurers Association of America and several Texas professional medical associations filed comments that expressed their respective opposition to increasing the IRO fees. TDI does not appear to be amenable to increasing the fees by 43 percent and adding a \$1,500 fee for the review of life-threatening conditions as has been requested by the IROs.

Division of Workers' Compensation Rule-Making Activities

The Commissioner of Workers' Compensation adopted amended and new rules and did not act on one rule-making initiative during the 3rd Quarter of 2014. The DWC took the following rule-making actions:

Amended and New Mode of Payment Rules Adopted

On January 1, 2015, Commissioner of Workers' Compensation Ryan Brannan [adopted](#) amended Rule 124.5 regarding mode of payment by insurance carriers, and new Rule 124.6 regarding electronic transfer payments made through an access card. The rules address issues that arise out of the increasing use of new payment method technologies, particularly access cards.

The adopted amendments are effective September 1, 2015.

Amended Electronic Data Interchange (EDI) Rules Adopted

On January 20, 2015, Commissioner of Workers' Compensation Ryan Brannan [adopted](#) amendments to Rules 134.802 – 134.805, 134.807, and 134.808 regarding definitions, reporting standards, reporting requirements, records required to be reported, state specific requirements, and insurance carrier EDI compliance coordinator and trading partners. The rules amendments update the existing technical requirements associated with insurance carriers' reporting medical charge and payment data to the DWC. The amended rules also include some additional requirements to improve the quality of data submitted.

The Commissioner also adopted the following three EDI tables by reference: [Texas EDI Medical Data Element Requirement Table, Version 2.0](#), [Texas EDI Medical Data Element Edits Table, Version 2.0](#), and [Texas EDI Medical Difference Table, Version 3.0](#).

The adopted amendments are effective September 1, 2015.

Lifetime Income Benefits Rule Adopted

On February 10, 2015, Commissioner of Workers' Compensation Ryan Brannan [adopted](#) Rule 131.1 regarding the initiation of lifetime income benefits. The rule establishes requirements for the payment of LIBs. AIA, ICT and PCI met with DWC staff and negotiated alternate lifetime income benefit rule language which was incorporated into the adopted rule.

The adopted rule is effective June 1, 2015.

Attorney Fees Rules Amendments Not Adopted

The DWC did not adopt proposed amendments to Rules 152.3 and 152.4 that would increase the maximum reimbursement per hour for attorneys and paralegals as well as increase the number of hours that can be billed for certain activities. The proposed rules were allowed to expire without any action being taken on the adoption of the rule amendments.

Conclusion of Bulletin

The Insurance Council of Texas will provide future quarterly regulatory updates for our membership.

Please feel free to contact Steve Nichols, Manager of ICT's Workers' Compensation Program, at (512) 786-3946 or via e-mail at snichols@insurancecouncil.org should you have any questions about or wish to discuss any of the regulatory developments reported on in this bulletin.