



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
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JULIE MIX McPEAK
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January 12, 2012

Honorable David Lillard, Jr., Chair
Tennessee Workers' Compensation Advisory Council
Treasurer, State of Tennessee
State Capitol, First Floor
Nashville, TN 37243-0225

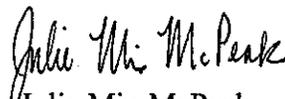
Dear Chairman Lillard:

Tenn. Code Ann. §50-6-402(d) requires that the Commissioner of Commerce and Insurance report to the Workers' Compensation Advisory Council regarding all workers' compensation filings made by the designated rate service organization and received by this Department.

Attached to this letter, please find a summary of all NCCI filings made in Tennessee for the period October 1, 2011 through December 31, 2011. This Department appreciates the role that the Workers' Compensation Advisory Council provides in the area of workers' compensation regulation.

Should you or any member have questions or comments concerning this report, please do not hesitate in contacting me or a member of my staff.

Sincerely,


Julie Mix McPeak
Commissioner

JMM/ms

NCCI Filing Activity Report:

Summary as of December 31, 2011

(includes filings received October 1, 2011 and later)

1. Item U-1398 – Revisions to Statistical Plan for Workers Compensation and Employers Liability Insurance

Filed: October 26, 2011

Effective Date: January 1, 2013 to new and renewal voluntary and assigned risk policies, unless otherwise specified.

Status: Approved October 28, 2011

PURPOSE

"The purpose of this item is to clarify and enhance the rules of NCCI's Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan). In addition, this item includes clarification in NCCI's Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (Experience Rating Plan) to support these changes."

BACKGROUND

"NCCI's Statistical Plan provides rules for reporting unit statistical data in NCCI states. On an ongoing basis, NCCI identifies opportunities for improvements and the implementation of reporting rule enhancements. This process ensures that the manual provides clear data reporting instructions. The revisions in the item are described in the following numbered list:

1—Revision of Non-compensable and Fraudulent Claims Reporting

The current Statistical Plan rules require non-compensable and fraudulent claims to be reported with zero dollars in the loss amounts. When the determination occurs subsequent to units being reported, correction reports are required to reduce loss amounts to zero dollars on prior reports. These corrections allow these claims to be excluded from the calculation of experience ratings.

Based on industry and NCCI actuarial feedback, it was determined that these loss amounts should not be reduced to zero dollars. To ensure that these claims continue to be excluded from the calculation of experience ratings, NCCI's experience rating system will systematically exclude the following claims from the calculation of experience ratings:

- Claims Reported With Loss Condition Code—Type of Settlement—Non-compensable (Code 05)
- Claims Reported With Fraudulent Claim Code—Fully Fraudulent (Code 02)

This process will allow insurers to report loss amounts that are reflective of the insurers' systems without needing to reduce these losses to zero. Separately, NCCI evaluated the Fraudulent Claim Code values and determined that the Partially Fraudulent Claim Code should be eliminated.

2—Revision of Permanent Partial Injury Type

The current Permanent Partial Injury Type definition requires the inclusion of temporary injuries that satisfy specific conditions. NCCI's Actuarial Department reviewed the appropriateness of these special conditions and determined that all references to temporary injury should be removed. This is intended to simplify reporting and enhance the alignment of Injury Type coding with benefits paid or expected to be paid.

3—Elimination of Hard Copy Reporting

NCCI currently accepts unit statistical reports submitted in the industry standard electronic format, online entry using reporting tools available on ncci.com, and hard copy reporting format. Recent analysis shows that the combination of electronic reporting and online entry represents virtually 100% of unit reports received by NCCI. The hard copy reporting option has become obsolete—replaced by the electronic reporting and online entry options—which are now standard methods of reporting.

4—Elimination of Medical-Only Grouped Claim Reporting

The Statistical Plan currently includes a rule that medical-only claims of \$2,000 or less may be grouped together. When this reporting option is utilized, the medical-only loss amounts of the individual claims are grouped together and reported on one record. For grouped claims, the Claim Count field is reported to reflect the total number of claims that have been grouped together, and the Claim Number is left blank. NCCI analysis shows that this option is rarely used by data reporters, as virtually 100% of medical-only claims are reported individually to NCCI. Industry feedback has indicated that insurers prefer to report these claims individually as they are represented in their company systems.

5—Addition of Cause of Injury Code

The Injury Description Code is a three-part data element comprising Part of Body, Nature of Injury, and Cause of Injury codes. As with other data elements, additions and changes to coding values are coordinated through the Workers Compensation Insurance Organization (WCIO) to promote the uniformity of code values for all workers compensation data collection organizations. Recently, the WCIO approved a new Cause of Injury Code 93—Gunshot and this code is being implemented by NCCI and the other workers compensation bureaus.

6—Reporting Clarifications

On an ongoing basis, NCCI reviews the Statistical Plan to identify rules that need further clarification based on questions received from the industry. The rules clarified in this item are:

- Single state, multistate, and “if any” policies
- Coal mine reporting—including the distinction between black lung and traumatic experience
- Excess policies
- Expense Constant and Balance to Minimum Premium
- Individual Risk Rating Plans rule to report NCCI-filed and insurer-filed programs
- Reportable and Non-Reportable Claims
- Correction reporting for Part of Body Code 65—Unknown

Additionally, items categorized as administrative updates, such as minor formatting changes, which have no impact on reporting rules, are included.

PROPOSAL

The following changes [were] proposed for policies effective January 1, 2013 and subsequent unless otherwise specified:

1—Revision of Noncompensable and Fraudulent Claims Reporting

Implement the following non-compensable and fraudulent claims reporting rule changes as provided in the Statistical Plan and Experience Rating Plan Manual exhibits:

- Reporting of loss values as reflected in company systems
- Continuation of coding claims with appropriate Type of Settlement Code for non-compensable claims and appropriate Fraudulent Claim Code for fraudulent claims
- Elimination of Partially Fraudulent Claim Code (01)
- Experience Rating usage of Type of Settlement Code—non-compensable (Code 05) and Fraudulent Claim Code—Fully Fraudulent (Code 02) to exclude these claims from experience ratings

2—Revision of Permanent Partial Injury Type

Modify the Permanent Partial definition to remove references to temporary injury. This is effective for claims with accident dates of January 1, 2013 and subsequent.

3—Elimination of Hard Copy Reporting

Eliminate the option to submit hard copy unit statistical reports for units received January 1, 2013 and subsequent. All hard copy references are being removed.

4—Elimination of Medical-Only Group Claim Reporting

Eliminate the option to group medical-only claims and related rules for units with policy effective dates January 1, 2013 and subsequent.

5—Addition of Cause of Injury Code

Add a new Cause of Injury Code, Gunshot—Code 93 in accordance with industry standards.

6—Reporting Clarifications

Implement the following reporting rule clarifications:

- Reporting requirements for single, multistate, and “if any” policies
- Coal mine reporting rules to include distinction of black lung disease experience from other disease and traumatic experience
- Excess policies
- Reporting of Expense Constant and Balance to Minimum Premium
- Redefining Individual Risk Rating Plans rule to separately identify schedule rating, deductibles, and other programs—by NCCI-filed and insurer-filed programs
- Reportable and Non-Reportable Claims
- Correction requirements for Part of Body Code 65—Unknown
- Administrative updates”

IMPACT

“There will be no premium or experience rating impact as a result of the changes made by this item. As part of NCCI’s continuing effort to simplify and clarify manual rules, it is anticipated that these changes will enhance the understanding of the rules in the Statistical Plan and provide further direction for reporting unit statistical data.”¹

¹ Filing Memorandum for U-1398

2. **04-TN-2011 — Revisions To Basic Manual Tennessee State Rule Exceptions For Rule 2-E-1-B And Rule 2-E-3**

Filed: 11/16/11

Effective Date: **To be effective 12:01 a.m. December 16, 2011, applicable retroactively to new, renewal, and outstanding voluntary policies.**

Status: Approved November 18, 2011

PURPOSE

"This item revises the current Tennessee state rule exceptions for Rule 2-E-1-b and Rule 2-E-3 in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*."

BACKGROUND

"The existing Tennessee state rule exceptions for Rule 2-E-1-b and Rule 2-E-3 in NCCI's *Basic Manual* describe the payroll allocation and premium basis for executive officers, partners, and sole proprietors engaged in the construction industry.

Tennessee recently enacted Senate Bill 1550. As a result, NCCI filed and received approval for Items 03-TN-2011 and RM-03-TN-2011, which redefined "engaged in the construction industry" to account for policies with more than one classification code.

After the Tennessee Department of Commerce and Insurance approved these items, it was determined that the enacted legislation also had changed who could be exempt from workers compensation coverage by amending Tennessee Code Annotated, Section 50-6-902(b), subdivisions (4) and (5) as follows:

(4) Is a construction services provider performing work directly for the owner of the property; provided, however that this subdivision (4) shall not apply to a construction services provider who acts as a general or intermediate contractor and who subsequently subcontracts any of the work contracted to be performed on behalf of the owner;

(5) Is a construction services provider building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the construction service provider's own property;

Upon further review of the statutory changes with the Tennessee Department of Commerce and Insurance, it was determined that the term "nonexempt commercial construction project," as currently used in the Tennessee state rule exceptions for Rule 2-E-1-b and Rule 2-E-3 in NCCI's *Basic Manual*, required revision."

PROPOSAL

"This item proposed to revise the current Tennessee state rule exceptions for Rule 2-E-1-b and Rule 2-E-3 in NCCI's *Basic Manual* by removing the word "commercial" from the premium determination formula as a result of the enactment of Senate Bill 1550."

IMPACT

"This item may have a negligible premium impact on statewide premium. NCCI is unable to determine how many risks will be impacted."

IMPLEMENTATION

"The attached exhibits outline the changes required to NCCI's *Basic Manual* for implementation:

- **Exhibit 1 (attached)** details the changes required to the Tennessee state rule exception for Rule 2-E-1-b.
- **Exhibit 2 (attached)** details the changes required to the Tennessee state rule exception for Rule 2-E-3."²

3. RM-04-TN-2011 — REVISIONS TO BASIC MANUAL TENNESSEE STATE RULE EXCEPTIONS FOR RULE 2-E-1-B AND RULE 2-E-3

Filed: 11/16/11

Effective Date: To be effective 12:01 a.m. December 16, 2011, applicable retroactively to new, renewal, and outstanding voluntary policies.

Status: Approved November 18, 2011

This is the assigned risk version of 04-TN-2011.

² Filing Memorandum for 04-TN-2011

**ITEM 04-TN-2011—REVISIONS TO BASIC MANUAL TENNESSEE STATE RULE EXCEPTIONS
FOR RULE 2-E-1-B AND RULE 2-E-3**

**EXHIBIT 1
BASIC MANUAL—2001 EDITION
TENNESSEE STATE RULE EXCEPTIONS
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,
AND SOLE PROPRIETORS
1. Executive Officers**

b. Premium Determination

Add the following to Rule 2-E-1-b:

- (6) For the construction industry, payroll will be adjusted based on the proportion of the gross receipts attributable to nonexempt-~~commercial~~-construction projects as defined in the Tennessee Code. For purposes of this rule, engaged in the "construction industry" means any person or entity assigned to the contracting industry group, since those classifications are designated by the National Council on Compensation Insurance, Inc. Where more than one classification applies, the governing code, as defined by the *Basic Manual*, will be used to determine whether the person or entity is engaged in the construction industry. Refer to Rule 1-B-5 for additional information. The allocation of chargeable payroll between nonexempt-~~commercial~~-construction projects and all other construction projects will be determined as follows:

$$\frac{\text{Gross receipts* for all nonexempt-~~commercial~~-
construction projects}}{\text{Total gross receipts* for all projects}} \times \text{Payroll} = \text{Chargeable payroll}$$

* The gross amounts received by the policyholder during the policy period in connection with the business of construction.

Minimum payroll for executive officers in the construction industry as shown on the Miscellaneous Values in the state rate pages is to be modified by the gross receipts for all nonexempt-~~commercial~~-construction projects to total gross receipts for all projects ratio.

**ITEM 04-TN-2011—REVISIONS TO BASIC MANUAL TENNESSEE STATE RULE EXCEPTIONS
FOR RULE 2-E-1-B AND RULE 2-E-3**

**EXHIBIT 2
BASIC MANUAL—2001 EDITION
TENNESSEE STATE RULE EXCEPTIONS
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,
AND SOLE PROPRIETORS**

3. Partners or Sole Proprietors

Add the following to Rule 2-E-3:

For the construction industry only, premium determination for each partner and sole proprietor treated as an employee is based on actual payroll amount, subject to the minimum and maximum payroll amounts for partners and sole proprietors in the construction industry shown under the Miscellaneous Values in the state rate pages. For purposes of this rule, partners and sole proprietors engaged in the "construction industry" means any person or entity assigned to the contracting industry group, since those classifications are designated by the National Council on Compensation Insurance, Inc. Where more than one classification applies, the governing code, as defined by the *Basic Manual*, will be used to determine whether the person or entity is engaged in the construction industry. Refer to Rule 1-B-5 for additional information.

These minimum and maximum payroll amounts include annual amounts of wages, salary, emoluments, or profits for each such partner or sole proprietors. IRS tax forms for sole proprietorships and partnerships may be used to determine the actual payroll amount as follows.

For sole proprietorships in the construction industry that otherwise verify net profit or loss by submitting IRS Schedule C for the coverage period:

If Schedule C shows a . . .	Then the payroll amount used to calculate premium will be the . . .
Net loss or a net profit amount that is less than the minimum payroll amount shown on the Miscellaneous Values in the state rate pages	Minimum payroll amount shown on the Miscellaneous Values in the state rate pages
Net profit amount that falls between the minimum and maximum payroll amounts shown on the Miscellaneous Values in the state rate pages	Net profit amount
Net profit amount that is greater than the maximum payroll amount shown on the Miscellaneous Values in the state rate pages	Maximum payroll amount shown in the Miscellaneous Values in the state rate pages

For partnerships in the construction industry that otherwise verify partners' net earnings or loss by submitting IRS Form 1065 (U.S. Return of Partnership Income) with Schedule K-1 for each partner for the coverage period:

If Schedule K-1 shows a . . .	Then the payroll amount used to calculate premium will be the . . .
Net earnings (loss) from self-employment ¹ amount that is less than the minimum payroll amount shown on the Miscellaneous Values in the state rate pages	Minimum payroll amount shown on the Miscellaneous Values in the state rate pages

ITEM 04-TN-2011—REVISIONS TO BASIC MANUAL TENNESSEE STATE RULE EXCEPTIONS
FOR RULE 2-E-1-B AND RULE 2-E-3

EXHIBIT 2 (CONT'D)
BASIC MANUAL—2001 EDITION
TENNESSEE STATE RULE EXCEPTIONS
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,
AND SOLE PROPRIETORS
(Cont'd)

Net earnings from self-employment amount that falls between the minimum and maximum payroll amounts shown on the Miscellaneous Values in the state rate pages	Net earnings from self-employment amount
Net earnings from self-employment amount that is greater than the maximum payroll amount shown on the Miscellaneous Values in the state rate pages	Maximum payroll amount shown on the Miscellaneous Values in the state rate pages

¹ Net earnings (loss) from self-employment is taken from Part III of Schedule K-1 (e.g., Line 14—see page 2 of the 2008 Schedule K-1 [IRS Form 1065]).

In the case of a nonformalized partnership, tax returns for each alleged partner should be submitted for review (for example, IRS Schedule C for each alleged partner). If Schedule C is submitted for each said partner, the rule for sole proprietorships will apply.

The IRS tax forms reviewed for premium determination for partners and sole proprietors will be the most current available. Tax forms more than two years from the effective date will not be accepted for premium determination. If IRS tax forms within two years of the effective date are not provided, premium determination for each partner and sole proprietor will be based on the maximum payroll amount as shown on the Miscellaneous Values in the state rate pages used for partners and sole proprietors in the construction industry.

Note: Payroll is excluded when the partner does not perform or ceases to perform any duties and does not visit the premises, except perhaps to attend directors' meetings.

Net profits/earnings will be adjusted based on the proportion of the gross receipts attributable to nonexempt-commercial construction projects as defined in the Tennessee Code. The allocation of chargeable payroll between nonexempt-commercial construction projects and all other construction projects will be determined as follows:

$$\frac{\text{Gross receipts}^2 \text{ for all nonexempt-commercial construction projects}}{\text{Total gross receipts}^2 \text{ for all projects}} \times \text{Schedule C or K-1} = \text{Chargeable payroll}$$

² The gross amounts received by the policyholder during the policy period in connection with the business of construction.

Minimum payroll for partners and sole proprietors in the construction industry as shown on the Miscellaneous Values in the state rate pages is to be modified by the gross receipts for all nonexempt-commercial construction projects to total gross receipts for all projects ratio.