



Approved Meeting Minutes

Oregon Workers Compensation Rating System Review & Advisory Committee

Agenda Tracking No.: ORAC 07-2015

Prepared by: Tim Hughes

Date of Meeting: Tuesday, October 20, 2015

Minutes Release Date: November 23, 2015

Location of Meeting: Lincoln Center Office Complex, located at 10220 S.W. Greenburg Road, Portland, Oregon.

Members:

Name	Representing	Voting? Y/N	Present? Y/N	Substitute
David Waki	Dept. of Consumer & Business Services, Labor & Industries	N	Y	
Ed McKenney	Gem Equipment	Y	Y	
DeAnne Hoyt	SAIF	Y	Y	
Meegan Williams	Liberty Mutual Ins.	Y	Y	
Ralph E. Wyatt	Linn County	Y	Y	
Michael Menacho	Republic Indemnity Ins.	Y	Y	
Steve O'Connell	Travelers	Y	Y	
Mike Hensley	Farmers Ins. Co. of Oregon	Y	N	

Others in Attendance:

Name	Representing
David Dahl	Dept. of Consumer & Business Services, Labor & Industries
Linda Repp	Dept. of Consumer & Business Services, Labor & Industries
Jessica Epley	National Council on Compensation Insurance
Tim Hughes	National Council on Compensation Insurance
Mike Taylor	National Council on Compensation Insurance
Sean Cordell*	National Council on Compensation Insurance
Bill Dodds*	National Council on Compensation Insurance
Emily Drew	Liberty Mutual
Clyde Rapozo, Jr.	Liberty Mutual
Jaye Fraser	SAIF
Brian Murphy	SAIF
Eric Williams	SAIF
Michelle Summerlin	SAIF
Megan Olson	Travelers

*Participated by telephone



Agenda Items

Issue
<p>New NCCI State Relations Executive (SRE)</p> <p>Mike Taylor is retiring from NCCI at the end of October, 2015. The Committee Chair thanked Mike for his years of service and welcomed his replacement, Jessica Epley. Jessica will serve as NCCI's SRE for the states of AK, ID, MT, OR, WA and WY. As a SRE, Jessica is responsible for NCCI's regulatory and legislative affairs, including rate/loss cost filings, legislative pricings, rule and form filings, appeals mechanisms, and residual market issues.</p>

Issue	Resolution
<p>2016 ORAC Meeting Dates</p> <p>The following meeting dates are proposed for 2016:</p> <ul style="list-style-type: none"> • January 26, 2016 • April 19, 2016 • July 19, 2016 • October 18 , 2016 	<p>A motion was made, seconded and passed by majority vote and it was</p> <p>RESOLVED, that the 2016 meeting dates are adopted as submitted.</p>

Issue	Resolution
<p>Item RM-O1-OR-2015—Revision to Performance Standard 8—Billing & Collection for Deductibles</p> <p>NCCI staff presented this item which revises the Oregon performance standard for optional medical cost reimbursement for nondisabling claims in NCCI's <i>Assigned Carrier Performance Standards (Performance Standards)</i>.</p> <p>Oregon Revised Statute (ORS) §656.262(5) provides that an employer may reimburse a carrier up to a defined dollar amount for medical services paid by the carrier for any accepted nondisabling claim if the employer so chooses. According to Oregon Administrative Rule (OAR) 436-060-0055(3)(a), if an employer wishes to make a reimbursement, then within 30 days following each three month period after policy inception or a period mutually agreed upon by the employer and the carrier, the carrier must provide the employer with a list of all accepted nondisabling claims.</p> <p>Currently, Oregon's exception to Performance Standard 8—Billing and Collection</p>	<p>A motion was made, seconded and passed by majority vote and it was</p> <p>RESOLVED, that Item RM-O1-OR-2015 is recommended for filing with DCBS as submitted.</p>



for Deductibles (PS 8) in NCCI's **Performance Standards** provides that statements for optional medical cost reimbursements must be mailed to employers, at a minimum on a quarterly basis, during the policy period. Oregon's exception to PS 8 must be revised to be consistent with OAR 436-060-0055.

NCCI proposed the following change, shown in revision marking, to PS 8 to more closely reflect the controlling statute:

1. In accordance with ORS §656.262 (5) as amended by 2007 H.B. 2756 and OAR 436-060-0055, statements for optional medical cost reimbursements must be ~~mailed~~ provided to employers, at a ~~minimum on a quarterly basis, during the policy period~~ within 30 days following each three month period after policy inception unless the assigned carrier has an agreement with the employer that specifies a different timeframe. If the assigned carrier has an agreement with the employer that specifies how often these claims will be reported, the assigned carrier will provide the employer their statement of the paid accepted non-disabling claims according to the terms of their agreement.
2. The statement must disclose the eligible medical cost paid by the assigned carrier during each ~~quarter~~ the period or timeframe referenced in PS 8-1. The statement may require payment to be postmarked within 30 calendar days from the date of the statement.
3. Reimbursement of eligible medical costs is at the discretion of the employer.
4. Nonpayment may not be cause for cancellation or collection efforts.
5. Oregon law prohibits use of amounts reimbursed in rating or dividend calculations for the employer.

Discussion followed whether to adopt the exact language contained in the statute or whether the language proposed by NCCI was acceptable. After discussion, it was agreed that the NCCI language is acceptable. To revise the draft filing language at this point in time will delay the submission of the filing.

Issue	Resolution
<p>NCCI Action Plan for Reviewing Code 9180—Amusement Device Operation NOC—Not Traveling—And Drivers, and Code 9016—Amusement Park or Exhibition Operation And Drivers</p> <p>NCCI staff addressed its action plan for reviewing Code 9180 and Code 9016. A review of these classifications was requested during ORAC's July 2015 meeting as it is believed the scope language of each code requires further clarity on the treatment of ancillary operations.</p> <p>NCCI will perform a top to bottom review of codes 9180 and 9016. Any proposed changes will be vetted through the NCCI Underwriting Committee for a filing,</p>	<p>No action taken. Information only.</p>



<p>which will then be presented to ORAC for approval. This process is expected to be completed by October 2016. No further action was taken on this item pending NCCI's further review during 2016.</p>	
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Issue	Resolution
<p>Experience Rating <i>Premium Eligibility Threshold (PET)</i></p> <p>NCCI staff provided preliminary information on a future national filing that will amend/index PET. The following information was provided:</p> <ul style="list-style-type: none"> • The loss experience generated by experience rated risks is regularly reviewed to ensure that the Experience Rating Plan is appropriately responsive. The premium eligibility level for experience rating should be high enough that at least one claim is expected in the three-year period used in experience rating. • In Oregon, a risk qualifies for experience rating if it has \$5,000 in premium over the most recent 24 months of the experience period, or an average annual premium of at least \$2,500, if more than 24 months in the experience rating period. Based on NCCI research, this threshold should be higher in Oregon and in other states that have the same or higher thresholds. • Under the current NCCI thresholds, risks that are too small to expect even one claim could receive a credit for being claim-free. Generating credits for very small claim-free risks, results in higher debit modifications for these risks for having just one claim. • NCCI is proposing a conservative approach by recommending that the current threshold should be indexed to the change in a state's average weekly wage. Since premium is based on payroll that is related to wages, the change in a state's average weekly wage is an appropriate measure to use as an index. • The typical annual change in any given state is likely to be zero or \$500/\$250. In other words, a state with a current threshold of \$5,000/\$2,500 is likely to be the same or increase to \$5,500/\$2,750. • Indexing based on increases in state average weekly wage will keep the number of small risks eligible for experience rating from increasing over time due to nothing more than inflation. 	<p>No action taken. Information only.</p>



<ul style="list-style-type: none"> It is expected that modifications using the higher threshold values will be issued beginning in January 2017 for rating effective dates beginning July 1, 2017. <p>There was a question asked of NCCI what the Oregon results of the study were. NCCI staff advised that they did not have specific Oregon information. A question was asked what the 'swing limit' would be. NCCI staff advised that the maximum change per year will be \$250.</p>	
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Issue	Resolution
<p>Treatment of Per Diem Reimbursement</p> <p>Dave Waki requested ORAC review and discuss the treatment of per diem reimbursement as it concerns trucking operations that pay a "per diem" amount to drivers based on the miles driven.</p> <p>Example: A truck driver receives a flat .06 per mile per diem which the employer states is meant to provide for personal expenses incurred while traveling overnight on behalf of the employer.</p> <p>Question: Is this allowance considered a per diem reimbursement that is excluded from premium determination?</p> <p><u>NCC Basic Manual Rule:</u></p> <p>Basic Manual, Oregon State Rule Exceptions, Rule 2—Premium Basis and Payroll Allocation</p> <p>A. Premium Basis</p> <p>Add the following to Rule 2-A:</p> <p>B. Payroll</p> <p>1. Includes: Change Rule 2-B-1 as follows:</p> <p style="padding-left: 40px;">p. Expense reimbursements to employees to the extent that an employer's records do not substantiate that the expense was incurred as a valid business expense. <i>Refer to Rule 2-B-2-h of the Oregon State Rule Exceptions.</i></p> <p>2. Excludes:</p>	<p>After discussion, a motion was made, seconded and passed by majority vote and it was</p> <p>RESOLVED, that ORAC does not consider a flat payment based on miles driven eligible for exclusion under Rule 2-B-2-h.</p>



Change Rule 2-B-2-h as follows:

- h. Expense reimbursements to employees to the extent that an employer's records substantiate that the expense was incurred as a valid business expense.

Note 1: When it is determined the employee is receiving expense reimbursements and the employer did not maintain verifiable receipts for the incurred expenses, a maximum of \$75 for each such day, or the negotiated labor contract amount, will apply to the non-receipted expenses.

Note 2: Reimbursed expenses and flat expense allowances, except for hand or power tools, paid to employees may be excluded from the audit provided that all three of the following conditions are met:

- The expense or allowance was incurred upon the business of the employer, and
- The amount of each employee's expense or allowance is shown separately in the records of the employer, and
- The amount of the expense or allowance approximates the actual expense incurred by the employee in the conduct of his or her work.

Argument for Excluding:

Per diem is an expense allowance provided to an employee to pay for their living expenses when traveling overnight on business for their employer. An employer may choose to pay their driver a per diem amount based on a flat rate per mile instead of requiring the driver to maintain verifiable receipts. Since receipts for expenses are not required, the \$75 maximum would apply.

One may argue that the payments in this example should be included based on the 3rd bullet in Note 2. However, Note 1 addresses the issue and allows a maximum amount of \$75 so there is no requirement to apply Note 2. If the flat .06 per mile per diem exceeds \$75 because the truck driver drove more than 1,250 miles in a day, the excluded amount would be capped at \$75.

Argument for Including:

This example does not represent a true per diem because the drivers are not receiving a flat amount for each day of business travel. Instead, the more they drive, the more they are compensated.

Regarding Note 1, it cannot be confirmed that a driver is incurring expenses when they are given a flat amount per mile. The \$75 flat allowance per day would apply



<p>if the drivers incur hotel/meal expenses but don't keep receipts.</p> <p>Note 2 addresses flat expense allowances and provides three conditions that must be met to qualify for exclusion. In this example, the third bullet is not met if a flat rate per mile amount does not approximate the actual expense incurred by the drivers.</p> <p>**</p> <p>ORAC members discussed the example and the argument for and against exclusion. Several carrier representatives stated they do not allow a flat per mile reimbursement to be deducted as per diem expense because there is no confirmation that actual expenses were incurred by the employee. In addition, under a flat miles driven payment, drivers are compensated even if they are not traveling overnight on the business of their employer and incur no personal expenses while driving. Conversely, they are not compensated when the truck breaks down and they incur expenses while waiting for repairs.</p> <p><u>Members also noted that</u> mileage driven does not meet the dictionary meaning of 'per diem.'</p>	
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Issue	Resolution
<p>Classification of Solar Panel Installation</p> <p>A SAIF representative stated that at ORAC's 1/27/15 meeting, it was resolved that Oregon would eliminate its state special for Code 5183 as it addressed solar panel installation. With the elimination of the Oregon language, the national treatment applied. The resulting NCCI item filing 01-OR-2015 identified the national codes used for solar panel installation as:</p> <ul style="list-style-type: none"> • Code 3724—Machinery or Equipment Erection or Repair NOC & Drivers • Code 5183—Plumbing NOC & Drivers • Code 5190—Electrical Wiring—Within Buildings & Drivers, and • Code 5551—Roofing – All Kinds & Drivers. <p>The NCCI filing did not elaborate on what solar panel work fell into each classification. SAIF was of the understanding that roof mounted solar panels are classified to Code 3724 since that is where other roof mounted machinery and equipment is classified. SAIF also thought Code 5551 is only applied to photovoltaic solar tiles installed on a roof.</p> <p>NCCI recently issued a <i>FYI Plus</i> circular stating that all roof mounted solar panels are classified to Code 5551. Applying Code 5551 for policyholders that install roof mounted solar panels will create an approximate 400% premium increase over</p>	<p>A motion was made, seconded and passed by majority vote and it was</p> <p>RESOLVED, that the proposed language captured in the minutes be adopted as an Oregon state special, effective 7/1/16.</p>



the current classification treatment for SAIF policyholders. Had SAIF known of NCCI's treatment, it would not have agreed to adopt the national classification approach and would have sought an Oregon special to classify roof mounted solar panel installation to Code 3724.

SAIF proposed the following Oregon state special language be considered for solar panel installation:

Code 3724—Solar Panel Installation or Repair & Drivers. Applies to the installation and repair of ground supported or roof mounted solar panels. Solar roof tile installation or repair is to be separately rated to Code 5551—Solar Roofing Tile Installation or Repair & Drivers. Solar panel plumbing and electrical work are to be separately classified.

Code 5551—Solar Roofing Tile Installation or Repair & Drivers. Applies to the installation and repair of solar roofing tiles. Roof mounted solar panels is to be separately rated to Code 3724— Solar Panel Installation or Repair & Drivers

ORAC members discussed the proposed language. A national carrier ORAC representative advised against adopting an Oregon state special and that Oregon should apply the national classification treatment. Other national carrier ORAC representatives indicated their respective companies do not write many of these types of risks. Some of the other member carriers questioned the application of Code 5551 to roof mounted solar panels while other machinery and items (i.e. satellite dishes, skylights, gutters, etc.) are classed to code 3724. They agreed that roofing is not an NOC classification and is intended for installation of roofing materials only.

The effective date of the proposed language was discussed. SAIF requested the filing effective date be expedited if possible so as not to disrupt their current book of business. NCCI provided input on the time required to draft a filing, secure ORAC approval of the draft, submit the item to DCBS, and announce and publish the revision to the industry when approved. It was determined to recommend adoption of SAIF's proposed language effective 7/1/16. SAIF intends to retain its current classification treatment pending the adoption of the proposed language and expressed concern about possible test audit errors should NCCI audit one of their policies related to this industry prior to the revisions being adopted. SAIF requested that DCBS staff be mindful of any test audit errors that might be issued on this class of business knowing that a state special revision was underway. Although the DCBS representative was not able to commit, he did state that he



would work with SAIF to ensure that test audit errors are not assessed through the transition period before the filing becomes effective 7/1/16.

NCCI alerted ORAC that other related codes may need Oregon state specials if the codes contain cross references that are not applicable in Oregon. NCCI staff stated that they will review all codes that may be affected by the proposed Oregon state special language and include revisions specific to Oregon as necessary.

As a result of the FYI Plus's notification that language specific to Solar Panel installation will be added to the Scopes for codes 5183 and 5190, SAIF will submit to NCCI Oregon specific language for these codes that will reflect the new Oregon state special treatment for Solar Panel installation (codes 3724 and 5551). NCCI agreed to send the proposed language for codes 5183 and 5190 to ORAC for a mail vote of approval. If approved, these additional changes will be added to the filing request for codes 3724 and 5551.

Issue

Miscellaneous Discussion

A question was raised whether PEO's should be allowed to be self-insured. Currently, self-insured PEO's are allowed to write worker's compensation for groups but are not required to follow NCCI rules. It was discussed that this may be putting such organizations at an unfair advantage as non-self-insured's must adhere to the rules. No action was taken on this issue.

Distribution: Committee Members