



Oregon Workers Compensation Rating System Review & Advisory Committee

Agenda Tracking No.: ORAC 04-2015

Prepared by: Tim Hughes

Date of Meeting: Tuesday, July 21, 2015

Minutes Release Date: August 3, 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	N	Clyde Rapozo, Jr.
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
Annette Boyce	Dept. of Consumer & Business Services, Labor & Industries
Dennis Kokulak	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
Miriam Jereda*	National Council on Compensation Insurance
Emily Drew	Liberty Mutual
Jaye Fraser	SAIF
Brian Murphy	SAIF
Eric Williams	SAIF
Michele Summerlin	SAIF
Diane Hyland-Edwards	SAIF
Carrie Hendry	Travelers
Steve Weiss	TriTac Shooting Solutions

*Participated by telephone



Agenda Items

Issue	Resolution
<p>ITEM B-1429—ESTABLISHMENT OF AUDIT NONCOMPLIANCE CHARGE</p> <p>Dennis Kokulak presented this national item and requested the Committee’s recommendation for filing with DCBS. This item has a proposed effective date of January 1, 2017. The filing establishes an Audit Noncompliance Charge (ANC) rule, endorsement, and statistical code to enable a carrier to apply an ANC to employers that do not allow the carrier to examine and audit its records. The filing addresses industry and regulatory concern over refusal by some employers to comply with final audits. Seven states had already taken independent action but the approaches were inconsistent from state to state. NCCI determined a national solution should be proposed to offer carriers and regulators a consistent method to deal with this problem.</p> <p>The proposed ANC rule is optional. Carriers determine usage on an individual policyholder basis. The carrier can charge up to twice the policy estimated premium. The filing includes a national endorsement that ensures policyholders are aware of the charge for noncompliance and a data reporting Statistical Code (9757) to ensure additional charges do not impact ratemaking or experience rating. The proposed ANC rule applies to both the voluntary and assigned risk markets.</p> <p>ORAC members expressed no concerns with the establishment of an ANC surcharge.</p>	<p>After review and discussion, a motion was made, seconded and passed by majority vote, and it was</p> <p>RESOLVED, that ITEM B-1429—ESTABLISHMENT OF AUDIT NONCOMPLIANCE CHARGE, is recommended for filing as presented.</p>

Issue	Resolution
<p>ITEM B-1430—ELIMINATION OF ANNIVERSARY RATING DATE (ARD)</p> <p>Dennis Kokulak presented this national item and requested the Committee’s recommendation for filing with DCBS. This item has a proposed effective date of January 1, 2017. The filing proposes to eliminate the ARD. Mr. Kokulak stated that the ARD rule was established in 1923 and has now become archaic. The ARD rule is unique to WC line of insurance and while it is simple in concept, it is difficult in application. NCCI has received consumer, agent and affiliate complaints concerning this rule. Mr. Kokulak stated that eight states have previously eliminated ARD and have experienced no market disruption. The elimination of the ARD will have no impact on experience rating date determination. The filing before ORAC was filed nationally July 2, 2015 with a proposed effective date of May 1, 2017. The long lead time provides for carrier programming and stakeholder education. At the time of the ORAC meeting, 14 states have approved the filing with no disapprovals.</p>	<p>After review and discussion, a motion was made, seconded and passed by majority vote, and it was</p> <p>RESOLVED, that ITEM B-1430—ELIMINATION OF ANNIVERSARY RATING DATE (ARD) is recommended for</p>



ORAC members expressed no concerns with the elimination of the ARD.	filing as presented.
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Issue	Resolution
<p>Underwriting Committee Update</p> <p>Dennis Kokulak provided the following update on issues/topics currently being reviewed by the NCCI Underwriting Committee (UC).</p> <p>Research Update-Low Credibility Classifications</p> <p>Of the 840 NCCI classifications, 212 have 25% or less credibility. Most of the low credibility classes are state specials. Fifty-nine of the 212 have 0% credibility. The remaining 153 codes have the following credibility:</p> <ul style="list-style-type: none"> <10%: 45 classes 10-15%: 33 classes 15-20%: 29 classes 20-25%: 46 classes <p>NCCI made a national filing in 2014 that addressed 59 zero credibility classes. Any business that was in a low credible classification that was deleted was reassigned to an analogous national code. The new research being completed will propose the elimination of the remaining 153 low credibility classes. The national filing is scheduled for release in October 2015 and will have a proposed implementation date of 1/1/2017 for Oregon.</p> <p>Experience Rating- Premium Eligibility</p> <p>Mr. Kokulak stated that most state premium eligibility levels for experience rating have not increased in many years. NCCI is considering an approach of indexing premium eligibility levels to state wage changes. Each year the Department of Labor (DOL) issues a report of each state’s weekly average wage. NCCI could use this report to determine if eligibility level should increase. Currently the Oregon eligibility level is \$5,000/\$2,500. If the DOL reports an increase of wages, the eligibility for experience rating would increase but no more than \$250 per year.</p> <p>In addition, NCCI is researching possible process improvements to the ERM 14 reporting form to include electronic submission of this form. In addition, the review is considering whether any changes to the current ownership rules are appropriate. This research is scheduled to be completed by year end 2015.</p> <p>ORAC members were invited to provide input on any of these items to NCCI.</p>	<p>No action taken on these items as they were informational only.</p>



Issue	Resolution
<p>Treatment of Test Audit Errors Where Carrier has Reported the Policyholder as Non-cooperative</p> <p>Jennifer McKenney stated that NCCI recently performed a test audit on a policy where the carrier listed the audit as “waived” because the policyholder was non-cooperative. The issue of how a waived carrier final audit is handled from a test audit results perspective was reviewed by ORAC in 2009 and 2010. At that time it was proposed to make this type of an error ‘advisory’, where it would not count against the carrier, but would still serve the purpose of having the unit data updated to reflect the more accurate payroll developed from the test audit. After review, the regulator during that time indicated the need for a change in the rule relating to the Disposition of Test Audits. In late 2011 when DCBS started the process to review the Oregon Administrative Rules (OARs) relating to premium audit and the test audit program, NCCI suggested to DCBS that the idea of an advisory error be considered again. The insurance regulator advised they would consider it internally prior to sharing the proposed draft rules at the rulemaking advisory committee meetings on OAR 836-043 held in early 2012. In the end, there was no provision added to the OARs to address this situation. Based on this history, NCCI has not changed its process for handling waived final audits.</p> <p>A carrier recently suggested a change to how this type of test audit error is treated and reported to DCBS.</p> <p>Ms. McKenney stated that test audit errors are not counted on policies with premiums of \$5,000 or less, and that of the 960 test audits performed during the past 18 months, 27 audits were completed on audits where the carrier had closed the policy with a waived audit. Of the 27 waived audits, 16 were under \$5,000 so no errors were reported.</p> <p>Based on the small number of carrier waived audits resulting in reported errors, OARC members did not believe a rule change addressing waived audits was necessary. ORAC Chair, David Waki, will contact the carrier raising the issue to advise them that no changes to the test audit rules are being recommended at this time.</p>	<p>No formal action taken by ORAC. David Waki will provide the Committee’s feedback to the carrier that raised the issue.</p>

Issue	Resolution
<p>Definition of Payroll – Inclusion of Sick Pay</p> <p>David Waki requested a general discussion on the current inclusion of sick pay in premium determination. Currently, Oregon has a state special rule that excludes vacation pay from premium determination but sick pay remains included. In other NCCI states, both vacation and sick pay are included in</p>	<p>No formal action taken. The Chair will advise the person that made the recommendation</p>



<p>premium determination.</p> <p>An ORAC member stated that the Oregon exception is based on an Oregon Revised Statute that specifically addresses the exclusion of vacation pay when determining workers compensation premium. If additional payroll is removed from premium determination, such as sick pay, it would have the effect of increasing the rates for all classifications. Further, sick pay is used to determine injured worker benefits, so excluding it from the premium basis would cause them to no longer match.</p> <p>After discussion, the consensus of ORAC members was that the exclusion of sick pay from the basis of premium is not recommended. No formal action was taken and the Mr. Waki advised he will share ORAC's position with the person who recommended that sick pay be excluded.</p>	<p>that ORAC does not support the exclusion of sick pay from premium determination.</p>
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	Resolution
<p>SAIF requested discussion on the following classification codes:</p> <ol style="list-style-type: none"> Code 8601 – Architects and Engineering. At issue is whether Oregon State Special Code 8601 permits the assignment of a construction classification in conjunction with this classification. NCCI recently published a Countrywide FYI Plus circular to clarify that a construction code can be assigned in conjunction with Code 8601 as long as the principal business is best described by Code 8601. The NCCI circular used the example of an engineering firm that may on occasion drill a core sample for testing purposes. Code 8601 applies to the engineering work as this is the principal business, but a drilling code is correctly assigned for the drilling of the core sample. <p>ORAC members confirmed that the Oregon treatment of Code 8601 is similar to that of the approach addressed in the NCCI circular. A construction classification can be added to a policy with a governing classification of Code 8601 as long as the principal business of the insured is that of architect or engineering firm. The discussion was concluded with no formal action taken.</p> <ol style="list-style-type: none"> Code 9180— Amusement Device Operation NOC – Not Traveling & Drivers, and Code 9016— Amusement Park or Exhibition Operation & Drivers. The discussion centered on how the two codes differ from each other and how the Note of Code 9180 impacts the application of NCCI Basic Manual rules. <p>The filed note for Code 9180 states: This classification does not apply to amusements, exhibitions or</p>	<p>No formal action was taken on item # 1.</p> <p>This item will be carried forward to the October 2015 ORAC meeting for a report by NCCI on its review findings.</p>



other operations separately classified in this manual (such as bath houses, billiard halls, boat livery, bowling lanes, garages, restaurants, retail stores, theaters) whether operated by the owner or lessee of the exhibition or amusement park or through independent concession.

The discussion concerned whether the above language is meant to instruct the separate classification of each distinct operation within a business operating under Code 9180 (e.g. separately rated restaurants, retail stores, etc.). In addition, a SAIF representative expressed concern about receiving conflicting information from NCCI on how the two codes are applied. Further, the issue of a recent appeal on a gun shooting range was used as an example of the concerns being expressed. The appeal concerned the gun range requesting a separate classification for its retail store operation. It was suggested that the language in the filed note of Code 9180 could be understood that a store operated by a Code 9180 operation must be separately classified. NCCI staff stated that the meaning and application of the Note language is to identify that there are other classifications for certain types of amusement operations and that the language is not meant to imply that each distinct operation within a business properly classified to Code 9180 should be separately classified.

SAIF advised they will provide examples of conflicting information they received from NCCI on these codes. NCCI staff agreed to review all examples and review the current language of each code to determine if a full review of the filed language is appropriate, or whether NCCI should issue a circular explain the application of the two codes.

This item will be carried forward to the October 2015 ORAC meeting for a report by NCCI on its review intentions.

Issue	Resolution
<p>ITEM R-1411—2015 UPDATE TO THE RETROSPECTIVE RATING PLAN HAZARD GROUP DIFFERENTIALS AND MANUAL RULES</p> <p>This item was included in the ORAC agenda as general information with no ORAC action required. R-1411 includes changes to the Large Risk</p>	<p>Informational only. No action taken by ORAC.</p>



<p>Alternative Rating Option (LRARO). The various state exceptions to this rule have been consolidated into a national table for ease of reference. The Oregon state rule exceptions have not been changed. ORAC members stated the table approach is appreciated as it makes clear each state’s rule exceptions. No action was taken.</p>	
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Issue	Resolution
<p>ITEM 01-OR-2015—REVISIONS TO BASIC MANUAL CLASSIFICATION FOR SOLAR PANEL INSTALLATION AND REPAIR</p> <p>This ORAC directed filing was provided for a “last look” before being filed with DCBS.</p> <p>During the January 27, 2015 ORAC meeting, ORAC discussed whether, in Oregon, Code 5183 applies to all construction operations related to the installation and repair of solar panels. ORAC determined that Code 5183 should apply to plumbing operations related to the installation and repair of solar panels and that other construction operations should be separately classified to the appropriate construction classification. As a result, the Oregon state special phraseologies for solar panel installation and repair must be eliminated. This classification treatment aligns with the national classification treatment for solar panel installation and repair.</p> <p>The completed file was reviewed and approved for filing.</p>	<p>After review, a motion was made, seconded and passed by majority vote, and it was RESOLVED, that ITEM 01-OR-2015—REVISIONS TO <i>BASIC MANUAL</i> CLASSIFICATION FOR SOLAR PANEL INSTALLATION AND REPAIR is recommended for filing as presented.</p>

Distribution: Committee Members