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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED

08/30/2023 3:35 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: NCCI Statistical Plan Changes

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/03/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/26/2023

TIME: 10:00 AM - 10:30 AM

OFFICER: Thomas Hojem

HEARING LOCATION

ADDRESS: Labor and Industries Building, 350 Winter St. NE, Basement, Conf Rm F, Salem, OR 97301

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-503-446-4951

CONFERENCE ID: 994094574

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams.

NEED FOR THE RULE(S)

Oregon Revised Statute (ORS) 737.225 requires all insurers to maintain statistics according to a statistical plan. The statistical plan for workers' compensation insurers is prescribed by the director of the Department of Consumer and Business Services (DCBS). See ORS 737.225(4).

That prescription is set forth in OAR 836-042-0045, which adopts the Statistical Plan for Workers' Compensation and Employers' Liability, 2008 Edition, (Statistical Plan) as the statistical plan for all workers' compensation insurance in Oregon. The Statistical Plan is managed by the National Council on Compensation Insurance (NCCI). Each time NCCI makes changes to the Statistical Plan, the director must adopt the revisions by administrative rule. See OAR 836-042-0045.

Recently, NCCI made two revisions to the Statistical Plan. First, NCCI has rolled back its COVID-era suspension of Oregon's field audit requirements, which can be found in OAR 836-043-0110, et. seq. Second, NCCI has removed the exclusion of COVID-19 claims from each insurer's experience rating.

Both revisions must be adopted by the director, and that is why this rulemaking is necessary.

It should be noted that when DFR suspended the field audit requirement, it issued Bulletin DFR 2020-9. This bulletin gives guidance on the suspension of field audits. Because the field audit requirement will be reinstated, this bulletin will be withdrawn in concert with this rulemaking.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Based on the information available to DCBS, this rule is not expected to have a significant impact on equity in the state. Primarily, it will affect insurers who write worker's compensation policies. Indirectly, this rule change could slightly increase or decrease the premiums paid by a business, depending on the number of COVID-19 claims the business reports. Because COVID 19-related claims represent a small percentage of workers compensation claims, any premium impact is likely to be very small. No information is available, however, that allows DCBS to assess the differential impact on different communities or groups of people in Oregon.

FISCAL AND ECONOMIC IMPACT:

Primarily, the rule will affect insurers who write worker's compensation policies. The impact to insurers will not likely be significant. Insurance companies were already conducting field audits before the COVID-19 pandemic, and will merely need to resume the practice.

In a more indirect way, the inclusion of COVID-19 related claims in experience rating could mean that premiums increase for some employers and decrease for others. None of these rate changes are expected to be significant based on information available to DCBS, since COVID-19 claims represent a small percentage of workers compensation claims.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Only workers' compensation insurers will be affected by this rule change. Some medium or large employers may have premium changes in future policies from this experience rating change. Since the COVID-19 claims represent less than two percent of the reported workers compensation claims, any premium change is expected to be minimal.

(2)(a) Only workers' compensation insurers will be directly affected by this rule change. Based on financial filings made to DFR, no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated. Indirectly, this rule could affect any business because it could cause slight changes in premiums due to COVID-19-related claims.

(2)(b) Insurers will need to resume their field audits as they did before the field audit requirement was suspended. Accordingly, these insurers will need to use whatever reporting, recordkeeping, and administrative activities they used at that time.

(2)(c) The suspension of the field audit requirement was temporary. Insurers will need to resume their field audit practices, including whatever services, supplies, and labor necessary to effectuate their audits and their attendant costs.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were invited to attend a Rules Advisory Committee (RAC) meeting. This change will have little if any effect on small businesses. Since only employers with workers compensation premium greater than \$5000 are subject to experience rating, the rule will not impact businesses with lower premiums, limiting its effect on smaller businesses.

Any premium change is also expected to be minimal. For example, SAIF reported \$21 million of COVID-19 claims from January 1, 2020 thru June 8, 2023, and this is 1.2% of the \$1.7 billion of direct written premium reported for 2020 thru March 31, 2023.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 836-042-0045

RULE SUMMARY: Amended because NCCI made two revisions to the Statistical Plan: NCCI rolled back its COVID-era suspension of Oregon's field audit requirements and NCCI removed the exclusion of COVID-19 claims from each insurer's experience rating.

CHANGES TO RULE:

836-042-0045

Workers Compensation Statistical Plan ¶

(1) The Statistical Plan for Workers' Compensation and Employers' Liability Insurance, 2008 Edition, filed by the National Council on Compensation Insurance and approved by the director to become effective January 1, 2009, and revisions approved by the director to become effective on or before ~~October~~ November 1, 2023, is prescribed as the statistical plan for workers' compensation and employers' liability insurance.¶

(2) Manuals or guides referenced within the statistical plan designated in section (1) of this rule are not prescribed by this rule.

Statutory/Other Authority: ORS ~~734.244~~25(4)

Statutes/Other Implemented: ORS ~~737.205~~, 737.265(2), 737.320