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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ID 6-2020
CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED
08/14/2020 8:52 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: COVID-19 Update to Statistical Plan for Workers' Compensation Insurance Reporting

EFFECTIVE DATE: 08/14/2020 THROUGH 10/24/2020

AGENCY APPROVED DATE: 08/13/2020

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Filed By:
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Rules Coordinator

NEED FOR THE RULE(S):

ORS 737.205 requires workers' compensation insurers to file copies of rates, rating plans, and rating systems with the Director of the Department of Consumer and Business Services (DCBS). It also allows insurers to meet filing obligations by becoming a member of or a subscriber to a licensed rating organization, which makes filings on the insurer's behalf.

ORS 737.225 states that the Director shall prescribe by rule the statistical plan for workers' compensation insurance. Accordingly, OAR 836-042-0045 currently prescribes the Statistical Plan for Workers' Compensation and Employer Liability Insurance, 2008 Edition, filed by the National Council on Compensation Insurance, with revisions through January 1, 2018. This rulemaking changes the date in the current administrative rule from January 1, 2018 to August 16, 2020, the effective date of revisions reflected in NCCI's new filing.

This rulemaking allows for NCCI's revisions, which comprise of excluding COVID-19 claims from experience rating, and indicating if an insurer did not perform an audit due to COVID-19.

JUSTIFICATION OF TEMPORARY FILING:

On March 8, 2020, Oregon Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency due to the COVID-19 outbreak in Oregon under ORS 401.165. COVID-19 claims must be excluded from experience rating, and insurers must be able to indicate if an audit was not performed because of the outbreak.

The Director finds that a failure to promptly update the prescribed statistical plan will result in serious prejudice to the public interest or the interest of the parties concerned. A failure to update would result in the inclusion of COVID-19 claims in experience rating, and no strategy for omitted audit information due to emergency orders, laws, and regulations impacting an employer's staffing and business operations. In light of the circumstances faced by insurers and the public due to the ongoing pandemic, the plan for maintaining and reporting workers' compensation insurance

statistics merits adjustments accordingly. The interests of insurers and the public are subject to prejudice if revisions to the prescribed statistical plan are not given effect in a timely and expeditious manner.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

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

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

AMEND: 836-042-0045

SUSPEND: Temporary 836-042-0045 from ID 4-2020

RULE SUMMARY: Updates the manual rules to include the most recent COVID-19 related revisions filed by the National Council on Compensation Insurance (NCCI).

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 ~~January~~ on or before August 16, 2018, 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.¶¶

~~[Publications: Publications referenced are available from the agency.]~~

Statutory/Other Authority: ORS 731.244, ORS 737.225

Statutes/Other Implemented: ORS 737.225, 737.205, 737.265(2), 737.320