

**West Virginia Offices of the Insurance Commissioner
Workers' Compensation Carrier Forum
Frequently Asked Questions**

- 1) When can workers' compensation carriers begin submitting filings with West Virginia's Rates and Forms Division?**

The Rates and Forms Division is accepting filings from workers' compensation carriers now. Filing requirements and instruction can be found at www.wvinsurance.gov/company/rate_filing_info.htm.

- 2) What are some of the expected future NCCI filings?**

NCCI anticipates making the following item filings prior to WV workers' compensation market opening July 1, 2008:

- NCCI's national endorsements not approved with original item filing: Pending Rate Change Endorsement WC 00 04 04; Rate Change Endorsement WC 00 04 07; Premium Discount Endorsement WC 00 04 06 A; USL&H Rate Change Endorsement WC 00 04 08.**
- NCCI will file a West Virginia specific cancellation / non-renewal form that outlines the recently amended notification laws.**
- NCCI's Residual Market rules and forms. The residual market will become effective January 1, 2009 in West Virginia.**

- 3) Do carriers have to re-file their Loss Cost Multiplier (LCM) each year?
The OIC does not require an annual loss cost multiplier filing, the approved LCM remains in effect until re-filed.**
- 4) Does West Virginia have a published targeted combined ratio for LCM filings?**

The OIC does not have a published targeted combined ratio for the workers' compensation line. Each filing is reviewed to determine if the information submitted justifies the proposed change and is fully supported by the accompanying documentation. Proposals are analyzed to confirm that rates are not excessive, inadequate or unfairly discriminatory.

- 5) Experience Rating Clarification; Clarify Anniversary Rating Date (ARD) and when split mods are issued**

West Virginia has adopted NCCI's national Basic and Experience Rating Plan Manuals. Basic Manual Rule 3-A-2 explains Anniversary Rating Date or ARD. ARD is the effective month and day of the policy in effect. Rules and rates are applied on an ARD basis for all employers.

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The Experience Rating Plan Rule 2-B-2 explains the term Rating Effective Date or RED. RED is the earliest date a specific experience rating modification can be applied to the policy. Generally, the ARD and RED for an employer will be the same date.

For West Virginia, most employers in the state had their RED established as July 1, 2007 because: (1) This was the date that NCCI's Experience Rating Plan Manual Rules became effective in West Virginia; (2) NCCI's Loss Cost Filing was effective July 1, 2007; and (3) BrickStreet was issuing six month short term policies, effective July 1, 2007.

The rules around the application of experience rating follow the national rules in West Virginia. If more than two experience mods apply to a single policy (multiple rating effective dates) the application of both those mod factors would be consistent with the national rules.

ARD/RED 7/1/2007

Policy period 10/2/2007 - 10/2/2008

Policy Period	10/02/2007			10/02/2008
7/1/2007 Effective Mod/Rates Apply	10/02/2007	06/30/2008		
7/1/2008 Effective Mod/Rates Apply			07/01/2008	10/02/2008

Reason that this scenario occurs:

Experience Modification Factor can only apply for up to 15 months (7/1/07 - 10/1/08)

Policy expiration date is 10/2/08 - 1 day more than 15 months after RED 7/1/08 experience mod factor must be applied during the policy period

Rates in effect on ARD can apply for full term of any policy beginning up to three months after the ARD

Policy effective date is 10/2/2007, 1 day more than 3 months after 7/1/2007 ARD

7/1/2008 rates must be applied during the policy period

Refer to NCCI's circular issued June 6, 2007 Circular CIF-2007-03 for explanation of impact to interstate rating.

6) Will contingent mods be applicable in WV?

Yes, the application of Contingent Mods is in Rule 4.C.3 of the Experience Rating Plan Manual and was approved for use in West Virginia.

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7) What fraud verbiage should carriers incorporate into their forms?

Claims forms and applications for insurance, regardless of the form of transmission, may contain the following warning or a substantially similar caveat:

“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.”

8) How does WV address insurance fraud?

The OIC has a dedicated fraud unit with investigators geographically located throughout the state. It is a requirement that all instances of suspected fraud be reported to the OIC. Under W. Va. Code § 33-41-5, any person engaged in the business of insurance that has knowledge or a reasonable belief that fraud or another crime related to insurance is being, will be or has been committed must provide the information to the Insurance Commissioner. A fraud reporting form can be found on the OIC website at www.wvinsurance.gov.

9) Are Medical Fee Schedule adjustments anticipated?

West Virginia’s medical fee schedule does not apply to managed care programs. The current medical fee schedule is under review for inclusion of adjustments occurring in other jurisdictions and adjustments are expected to be made during the summer, 2008.

10) What are the general requirements of owners and officers exempting themselves from workers’ compensation coverage?

In West Virginia, W. Va. Code § 23-2-1(g)(2), a company may exclude its owners, partners, equity members, board of directors and up to four (4) corporate officers from workers’ compensation coverage. Also, other officers may be exempt if they do not serve in a “dual capacity” for the company (both serving as an officer and performing administrative or other “day to day” duties for the company). A company is required to specifically exempt any such persons by providing information to the private carrier, including identifying information of the individuals the company intends to exempt. The process applying to owner/officer exemptions is specifically set forth in W. Va. Code St. R. § 85-8-6.3.

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11) Will carriers be responsible for reporting owner/officer information to the WV OIC?

This requirement has been amended out of W. Va. Code § 23-2C-15(c) by the provisions of H.B. 4636, which was passed by the West Virginia Legislature on March 8, 2008, and was made effective from passage. Based upon information from the insurance industry and independent OIC research, this appeared to be an unusual requirement of insurance carriers. In addition, it was very problematic to comply with when, for example, an insured employer is a publicly traded company. Therefore, there is no longer a statutory requirement that carriers obtain information related to owners/officers of policyholders, and to update that information during the policy period as it changes.

12) How can carriers obtain historical claim information?

Historical claim information is available via the NCCI Riskworkstation. There is no charge to employers requesting this information; however, carriers are assessed \$20 for the current experience rating worksheet and \$10 for each historical experience rating worksheet. If the insured is not experience rated, NCCI provides a Risk History Report. This report is \$10 per transaction. On each of these requests, the carrier must have a letter of authority from the employer. The data may be retrieved via the NCCI Riskworkstation application or by calling NCCI at 800-622-4123.

The OIC has implemented a loss run request for employer's to utilize to receive historical claim information. The link is located [here](#). Claims history subsequent to July 1, 2005 is obtainable from BrickStreet Mutual Insurance Company.

13) How and to what classes is the underground coal mine catastrophe applied?

The underground coal mine catastrophe provision is applicable only to classes 1005 and 1016 and its application is displayed in the approved algorithm contained in the West Virginia pages of the NCCI Basic Manual.

14) How will carriers report Excess Liability data to NCCI?

Excess Policy Reporting:

Unit Statistical—Excess W/C policies are required to be reported for unit statistical reporting in West Virginia.

Financial Calls--Excess W/C policies are only to be included in NCCI Financial Calls #1, #1A, #2 and #8. For all other Financial Calls, excess policy experience is not to be reported. The complete rule on Excess Policies is contained in the Reporting Guidebook for the Annual Calls for Experience, Part 6, Item 12 (Excess Policies).

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15) What are the requirements to write workers' compensation insurance for a professional employer organization ("PEO")?

The West Virginia Legislature passed H.B. 4079 during the 2008 regular session. A copy of the enrolled bill and the legislative history may be found at the following website: www.legis.state.wv.us. The bill creates a new article in Chapter 33 of the West Virginia Code relating to PEO's. The OIC is charged with the licensing and regulation of PEO's. Pursuant to the terms of the bill, PEO's operating in our state at the time of passage must obtain a license from the Insurance Commissioner by July 1, 2009. The OIC may examine or investigate the business and affairs of any PEO under market conduct examination provisions of Chapter 33 [W. Va. Code § 33-2-9]. The bill also prohibits PEO's from offering self-funded health plans to their client employers. The issues of PEO involvement with health plans, taxes, labor laws and unemployment taxes are to be studied by the Joint Committee on Government and Finance and several agencies.

The responsibility to obtain workers' compensation coverage must be specifically allocated in the professional employer agreement. The insurer must report payroll and claims data for each client-employer to the OIC or statistical agent in a manner that identifies both the client-employer and PEO. Insurer must also accurately report coverage status on each client-employer under applicable POC statutes and rules.

Workers' compensation coverage may be provided through PEO's on a master policy basis, but the insurer must be able to report experience accurately for each client-employer under the terms of the new law. No workers' compensation coverage may be provided through a PEO on a master policy basis in the residual market. The new law also allows workers' compensation coverage to be provided on a multiple coordinated policy basis. The new law clarifies that the protection of the exclusive workers' compensation remedy applies to the PEO, the client-employer, and all covered employees irrespective of who obtains the coverage. Emergency Legislative rules will be proposed during June, 2008 and amendments to title 85, Series 31 are also expected to be proposed during the summer, 2008.

16) What are West Virginia's adjuster licensure and residency requirements?

Adjusters must be licensed in our state; however they do not need to reside within our state to practice. Adjusters domiciled in states requiring the passage of an examination to obtain an adjusters license do not need to take the West Virginia adjuster licensing examination.

By insurance rule found at 114CSR25, section 3, certain persons performing the activities specified therein will not be deemed to be acting as an adjuster so as to require licensing. This rule should be consulted regarding adjuster requirements. In addition, Informational Letter Number 151, issued in February, 2005 addresses one of the limited exceptions to the licensing requirement set forth in the rule.

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This exception applies to a person located in a central office of the insurer, outside of West Virginia, who adjusts claims by telephone only and who does not enter the state in the course of adjusting claims. The informational letter expresses the Insurance Commissioner's interpretation that this exception also applies to out of state adjusters who adjust claims via email, facsimile, regular or overnight mail, or similar methods of communication, so long as the adjuster is always located in a central office of an insurer outside of our state. Both rule and informational letter can be found on the Insurance Commissioner's website.

17) Do Third Party Administrators have to maintain a physical location within WV?

TPA's are allowed to use non-resident adjusters, however, they must have non-resident adjuster licenses in WV. There is no requirement in WV law that a TPA have an in-state office.

Under the provisions of H.B. 4636, it is clarified that self insured employers and private carriers may enter into a contract to have their workers' compensation claims administered by a TPA. The bill further states that insurers and all self insured employers may only have contracts with TPA's to administer their claims if the TPA's are licensed under the TPA Act in Article 46, Chapter 33 of the West Virginia Code. Any TPA that directly or indirectly underwrites or collects charges or premiums or adjusts or settles workers' compensation claims on residents of West Virginia on behalf of an insurer is subject to the provisions of W. Va. Code § 33-46-1, et seq. The requirement that the TPA must maintain an office in West Virginia is deleted.

The OIC will propose rules to regulate the use of TPA's by private carriers and self-insured employers, including rules setting forth mandatory provisions for agreements between TPA's and self-insured employers or private carriers. These rules should be filed for public comment within the next few months and will be available on the OIC's website.

The model act, found at W. Va. Code § 33-46-1, et seq., allows for the licensing of non-resident administrators if the administrator has not obtained a home-state license in WV. However, an administrator is not eligible for a nonresident license if it does not hold a certificate of authority or license as a resident in a home state that has adopted the NAIC model TPA Act or a substantially similar act. In that case, the administrator would need to name any state as its home state which has adopted the NAIC model or a substantially similar law.

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18) How does the WV statute address the discontinuation of TTD benefits in those cases of the injured worker refusing to return to work?

The key to when TTD benefits may be discontinued is not whether the injured worker does (or does not) want to return to work, but whether the injured worker has: (a) reached maximum degree of improvement; (b) been released to return to work; or (c) actually returned to work. W. Va. Code § 23-4-7a(e)(4) directs, in part, that in all cases, a finding by a private carrier or self-insured employer that a claimant has reached maximum degree of improvement, terminates the claimant's entitlement to TTD benefits, regardless of whether the claimant has been released to return to work. W. Va. Code § 23-4-7a(e)(4) also directs, in part, that under no circumstances shall a claimant be entitled to receive TTD benefits either beyond the date the claimant is released to return to work or beyond the date that he or she actually returns to work.

19) What is mandolidis and how is it administered?

This term refers to the concept of a “deliberate intent” cause of action. If a claimant can prove the elements of the claim, the employer loses tort immunity and will be held liable for damages.

- In 1983, the Legislature amended the code to set out alternative ways for an employee to prove the deliberate intention necessary to strip his or her employer of immunity. First, the employee could prove that the employer acted with a “consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee” [§23-4-2(d)(2)(i)] or the employee could prove specified facts about an unsafe working condition to establish the employer's deliberate intent to injure [§23-4-2(d)(2)(ii)]. There was a five part test required.
- The 1983 amendments made it more difficult for an employer to lose the immunity provided by the Workers' Compensation Act.
- In 2005, the WV Legislature re-visited the deliberate intent statute and made additional amendments. The plaintiff now has an increased burden in establishing a cause of action under the five part test.
- The Statute now requires actual knowledge of the specific unsafe working condition and strong probability of serious injury or death presented by the condition as opposed to a “subjective realization and appreciation” required by the statute as previously written.
- Further, in order to prevail under the five part test the unsafe working condition must violate a “commonly accepted and well-known safety standard within the industry or business of the employer.” The plaintiff must now have competent evidence of written standards or guidelines which reflect a consensus safety standard in industry or business. It is important to note that the standards must now be written.

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- The statute also makes clear that the plaintiff does not have to have filed an underlying workers' compensation claim to file a deliberate intention suit.
- The statute also makes clear that the plaintiff's injuries or death must have been compensable under the workers' compensation statute, even if no workers' compensation claim has been filed.

20) Is "deliberate intent" coverage part of the required coverage under Chapter 23 of the WV Code for new carriers entering the WV market on July 1, 2008?

No.

The "Employers' Excess Liability Fund" was established under Article 4C of Chapter 23 as a vehicle to provide coverage for employers subject to Chapter 23 who may be subjected to liability for excess damages because the injury of an employee results from the deliberate intention of the employer to produce the injury or death. This fund and its obligations were transferred to BrickStreet on January 1, 2006.

BrickStreet Insurance is required by the provisions of W. Va. §23-4C-6 to offer insurance to provide for the benefits required by Article 4C until at least June 30, 2008. After that time, BrickStreet may choose to not offer this coverage. Currently, BrickStreet provides this coverage by special endorsement.

New private carriers entering the market after July 1, 2008 are not required to offer this type of coverage as part of their workers' compensation policies.

For further information, please refer to the "Memo on Deliberate Intent" in the Headlines section of the Insurance Commissioner's webpage.

21) The current time standards in West Virginia law for NCCI proof of coverage ("POC") reporting provides the carrier ten (10) days to report issuance of coverage and three (3) days to report cancellation. These time frames are short compared to other states, and it will be difficult for carriers to meet these requirements. Does the OIC plan on reviewing these time frames and possibly changing them?

The time frames relating to Proof of Coverage ("POC") reporting have been amended by H.B. 4636 following comments received from the insurance industry and independent research conducted by the OIC. The POC reporting provisions can be found at W. Va. Code § 23-2C-15.

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Reporting of new coverage has changed from within 10 days to within 30 days after the effective date of the new or renewal coverage, or the private carrier's receipt of notice of the employer's operations in this state, whichever is later. Notice of termination of coverage by the carrier has changed from 3 days after termination of coverage to at least 10 days prior to effective date of termination of coverage. Because a carrier's report of new or renewal coverage must include the expiration date for that policy, no separate proof of coverage reporting is required in situations in which a carrier declines to renew or a policy simply expires because the insured elects not to accept the carrier's offer to renew. The Insurance Commissioner's internal system will note the expiration date at the time of issuance or renewal when initially reported and the OIC will then be able to ensure that a timely new issuance or renewal of the coverage is received.

Notice of termination of coverage at the request of the employer has been added to the law as a POC reporting requirement. When the employer asks that the policy be terminated, the carrier must give notice within 10 days of the carrier's receipt of the employer's request.

H.B. 4636 further stated that a transfer of a policyholder between insurance companies within the same group is not considered a cancellation or refusal to renew a workers' compensation insurance policy.

22) Will market conduct and financial exams be conducted internally or by an outside vendor?

The OIC has in-house exam staff that can be supplemented with contract examiners when necessary. Carriers are subject to an annual exam fee, currently \$1,050, to provide for WV's exam services. West Virginia works collaboratively with the carrier's state of domicile when addressing examination needs.

23) What is the Old Fund Liability and how is it being handled?

The Old Fund Liability is the debt incurred while the workers' compensation commission operated as a state agency. This deficit is being addressed by an employer surcharge and a variety of other statutorily mandated revenue sources, including: severance taxes, personal income taxes and lottery funds. An annual audit is performed on the Old Fund deficit and available via the OIC website at www.wvinsurance.gov.

Deficit reduction surcharges are collected by the carriers, remitted to the OIC and are a direct pass through. Current actuarial reports indicate that the dedicated revenue streams are sufficient to retire the unfunded liability by 2016. Additionally, the state maintains bonding authority to supplement the revenues if a short-fall should occur. Based on improved results and financial gains the state does not believe the issuance of bonds will be necessary.

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An updated actuarial opinion will be released shortly which we believe will confirm that the financial position of the “Old Fund” has shown further improvements.

24) Surcharge Administration – How will this be applied?

W. Va. Code § 23-2C-3(f) provides for the private market debt reduction and regulatory surcharges to be assessed on only those premiums received for coverage under Chapter 23 (i.e. workers’ compensation coverage). Premium providing workers' compensation coverage, meaning that benefits will be paid to an employee who receives an injury in the course of and as a result of his (or her) employment, are subject to the Chapter 23 debt reduction and regulatory surcharges. If the coverage is secondary coverage (such as coverage for increased limits of employers' liability), then the premium is subject to the premium taxes and surcharge under Chapter 33.

If an employee is injured on a job in which the Federal government provides the workers' compensation coverage, then the injury is not subject to West Virginia workers' compensation coverage under Chapter 23 of the West Virginia Code, and there would be no Chapter 23 debt reduction and regulatory surcharges.

Surcharges are a statutory requirement for the benefit of the legacy debt and OIC administration. Once that legacy debt is fully funded, that surcharge may sunset. The surcharges are considered a “pass through” where the carrier collects the monies and submits directly to the Insurance Commissioner.