

**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 instructions 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 filings prior to WV's workers' compensation market opening July 1, 2008:

- Revision to WV Employers Liability Insurance Deliberate Intention Exclusion Endorsement WC 47 03 01 and WV Workers' Compensation and Employers Liability Coverage Domestic Service Employees Endorsement WC 47 03 14.
- Retrospective Rating Plan Manual for Workers' Compensation and Employers Liability Insurance. This item will also include all NCCI's national Retrospective Rating Plan Endorsements, applicable tables currently located in the manual. Any state specific Retrospective Rating factors will be filed with NCCI's next Loss Cost filing.
- National Basic Manual Rule 3-A classifications, Loss Costs or Rates Subject to Admiralty Law, FELA, & USL&H Act; Rule 3-A-11 Expense Constant; and Rule 3-A-19 Premium Discounts.
- 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's Schedule Rating Plan and Deductible Plan. The deductible plan is only for small deductibles. Large deductible plans need to be filed by the carrier for review and approval.

3) When will NCCI file the July 2008 loss cost?

The loss cost filing is expected to be received by the West Virginia Offices of the Insurance Commissioner during the March - April 2008 timeframe.

4) 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.

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5) 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.

6) 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.

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)

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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.

7) Will contingent mods be applicable in WV?

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

8) 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.”

9) 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.

10) 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.

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11) 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.

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

Under W. Va. Code §23-2C-15(c), the Insurance Commissioner is required to collect and maintain information related to officers, directors and ten percent or more owners of each carrier's policyholders. In addition, each private carrier is required to provide this information to the Insurance Commissioner within sixty days of the issuance of a policy and any changes to the information must thereafter be reported within sixty days of the change.

The reason for this statutory requirement is to enable the OIC to maintain an "Employer Violator System," or "EVS," which is intended to prevent certain owners and responsible officers who owe money to the State from continuing to conduct business through another corporate entity. The EVS system was created in 2003 and the duty to maintain it transferred to the OIC at the termination of the former Workers' Compensation Commission.

The OIC is currently exploring alternative methods of collecting the owner/officer data because it is our understanding that this type of reporting by insurers is an unusual regulatory requirement. We will update this notice as we gather more information.

13) 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.

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The OIC is considering the development of a web based application to allow carriers to access pre-July 1, 2005 claims history of employers. Claims history subsequent to July, 2005 is obtainable from the present carrier, BrickStreet Mutual.

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

The underground coal mine catastrophe provision is applicable only to classes 1016 and 1020 and its application is displayed in the approved algorithm contained in the West Virginia pages of the NCCI Basic Manual.

15) What Excess Liability data is required to be reported to NCCI?

Excess Policy Reporting:

Unit Statistical--Excess W/C policies are not 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).

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

Current West Virginia statutory law does not address PEO's, although the West Virginia Legislature is currently studying the issue for consideration of legislation. Currently, W. Va. Code St. R. § 85-31-1 et seq. ("Rule 31") addresses how PEO's may be written workers' compensation insurance. The Rule permits PEO's to be written in several different policy formats and emphasizes the need for accurate reporting of experience data, both for the PEO and each client employer. However, any PEO policy form must be approved on a file and use basis by the OIC. Also, because PEO's are a unique type of employer, the OIC recommends that insurers seek prior approval of PEO policy forms prior to using them.

Working with the stakeholders involved (carriers, PEO's, NCCI and national organizations), the OIC is currently reviewing the various options for PEO workers' compensation policy forms, and in the near future, will likely select a single basic policy format to be used for all PEO's in West Virginia. The goal is to find a format which assures accurate reporting of data but also provides carriers, PEO's and employers the flexibility needed to forge favorable business and insurance relationships. Carriers will be advised of any changes made by the OIC regarding PEO policy forms in order to be provided sufficient time to comply.

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17) 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. 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

18) 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 WV non-resident adjuster licenses. There is no requirement in WV law that a TPA maintain an in-state office.

WV has enacted the NAIC Model TPA Act. It currently only applies to administrators that underwrite or collect premiums from, or adjust or settle claims on residents of WV in connection with life, annuity or accident and sickness coverage offered by an insurer. It is anticipated that amendments will be sought to include TPA's that administer workers' compensation claims for insurers.

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.

19) 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

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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.

20) 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.
- Since the 1983 legislative amendments, the WV Supreme Court of Appeals held that W. Va. Code §23-4-2(c)(2) should not serve to circumscribe a common law Mandolidis claim, which is preserved within West Virginia's common law tort system.
- 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.

21) 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.

22) The current time standards in West Virginia law for NCCI proof of coverage ("POC") reporting requires carriers 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 current time frames for POC reporting are set by statute in W. Va. Code § 23-2C-15(f). The OIC has been made aware of concerns by the carrier community that these time frames are too short and inconsistent with the time frames in most other states, and that carriers have concerns about being able to meet these time frames. The OIC will continue to review this issue and consider proposing legislative changes if deemed appropriate.

23) 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

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\$1,050, to provide for WV's exam services. West Virginia works collaboratively with the carrier's state of domicile when addressing examination needs.

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

The Old Fund Liability is the debt incurred while the workers' compensation 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 of the Old Fund and audited financial statements published on 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. 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.

25) 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.