

NCCI Rate Filing

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Honorable Kevin M. McCarty
Director
Office of Insurance Regulation
200 E. Gaines St., Tallahassee, FL 32399-0330

Re: Law Only Filing Due to Impact of SB 50A – Revised Workers Compensation Rates and Rating Values Proposed to be Effective October 1, 2003

Dear Director McCarty:

In accordance with the applicable statutes and regulation of the state of Florida and your Order of July 16, 2003, we are filing revised voluntary rates and rating values for your consideration and approval. This proposed decrease results from the impact of the provisions contained in Florida Senate Bill 50A which was signed into law on July 15, 2003.

This filing proposes a rate level decrease of 14.0% for industrial classes and an overall decrease of 10.47% for “F” Classes, except for class code 9077 (United States Armed Service Risk - All Employees & Drivers). The proposed rate level decrease for “F”

Classes is less than 14% since federal benefits are applicable in many cases rather than state benefits. There is no impact to class code 9077 since only federal benefits apply.

The proposed rate level decrease represents a decrease of \$420 million in workers compensation costs. The reduced rates will apply to new and renewal policies that are effective on or after

October 1, 2003. Additionally, pursuant to your Order, the reduced rates will apply to all

policies in effect on October 1, 2003 on a pro-rata basis through the remainder of the term of these policies. The filing includes pro-rata tables which may be used by

companies to assist in the appropriate calculation of premiums for outstanding policies.

The Rate Change Endorsement (WC 00 04 07) may be used by companies to provide notice to employers of the application of the rate decrease to outstanding policies. This endorsement is currently approved in the state of Florida.

The revised rating factors, including those related to the coinsurance and deductible programs, the retrospective rating program, and other miscellaneous values, but not including experience rating factors, will be effective on October 1, 2003 for new and renewal policies only. The revised rating factors will not apply to policies outstanding on

October 1, 2003. This filing does not propose changes to the experience rating factors. This filing is made exclusively on behalf of the companies that have given valid consideration for the express purpose of fulfilling regulatory rate filing requirements and other private use of this information.

Please contact me at 561-893-3337 or Tony DiDonato at 561-893-3116 if you have any questions or need additional information.

Respectfully submitted,

Lori Lovgren
State Relations Executive

FLORIDA SENATE BILL 50A LAW FILING

Effective October 1, 2003

EXPLANATORY MEMORANDUM

1. Overview of Filing

Governor Jeb Bush signed SB 50A into law on July 15, 2003. SB 50A is a comprehensive law, which brings about changes to numerous provisions of the Florida workers compensation law. Primary components of the bill include: 1) Revisions to standards of compensability of claims and changes to indemnity benefits, 2) Revisions to medical services and reimbursements, 3) Changes in attorney fees and the dispute resolution process and 4) Changes to the JUA, exemptions, and other miscellaneous provisions.

On July 16, 2003, the Office of Insurance Regulation (OIR) ordered NCCI to make a filing to reduce rates to reflect the cost savings associated with SB 50A.

This filing is in response to the OIR's order.

This filing proposes a rate level decrease of 14.0% for industrial classes and an overall decrease of 10.47% for "F" Classes, except for class code 9077 (United States Armed Service Risk - All Employees & Drivers). The proposed rate level decrease for "F" Classes is less than 14% since federal benefits are applicable in many cases rather than state benefits. There is no impact to

class code 9077 since only federal benefits apply. The proposed rate level decrease represents a decrease of \$420 million in workers compensation costs.

The reduced rates will apply to new and renewal policies that are effective on or after October 1, 2003. Additionally, the reduced rates will apply to all policies in effect on October 1, 2003 on a pro-rata basis through the remainder of the term of these policies.

The filing includes pro-rata tables, which may be used by companies to assist in the appropriate calculation of premiums for outstanding policies. The Rate Change Endorsement WC 00 04 07 may be used to apply the rate decrease to outstanding policies. This endorsement is currently approved in the state of Florida.

The revised rating factors, including those related to the coinsurance and deductible programs, the retrospective rating program, and other miscellaneous values, but not including experience rating factors, will be effective on October 1, 2003 for new and renewal policies only. The revised rating factors will not apply to policies outstanding on October 1, 2003. This filing does not propose changes to the experience rating factors.

The breakdown of the proposed rate decrease by injury type can be found on

Exhibit I.

The proposed rate decrease of 14% does not contain any impact for the following:

1. Revision of medical services and reimbursements proposed to take effect January 1, 2004.
2. Revisions related to construction exemptions and enforcement proposed to take effect January 1, 2004.
3. Any impact which may result from NCCI's annual experience review Any impact related to the above changes, if any, will be contemplated in future filings made by NCCI.

This filing reflects NCCI's estimate of the impact of SB 50A on Florida workers' compensation loss costs, and is based on data from various sources, including, but not limited to, NCCI (Financial Call Data, Statistical Plan Data and Detail

Claim Information (DCI) Data), the Division of Workers Compensation, the Special Disability Trust Fund, and the Workers Compensation Research Institute (WCRI). In addition, NCCI conducted interviews with and gathered information from many stakeholders in the system. The various provisions of SB 50A will be subject to future administrative and judicial interpretations, and will likely bring about further changes in the workers compensation system, such as in the area of benefits usage and claims handling procedures. All of these factors will affect the overall cost savings estimated in this filing, and may eventually result in greater or lesser savings.

The results of NCCI's analysis of the changes adopted by this bill are contained in the following narrative and supporting exhibits.

2. Provisions of SB 50A and Assumptions Underlying Estimated Impacts

Fatal Benefits

- Funeral benefit increased from \$5,000 to \$7,500.
- Maximum aggregate benefit increased from \$100,000 to \$150,000.

The funeral and maximum aggregate benefits are increased by 50%. Not every claim is limited by the maximum, so total fatal indemnity benefits would only be expected to rise 31.6% (see Exhibit II).

Permanent Total Disability (PTD)

- Eligibility for PTD is tightened by redefining catastrophic injury to eliminate the Social Security “catch-all” language.
- A new standard is added that states that an injured worker may also qualify for PTD if the claimant can show that they cannot engage in at least sedentary work within 50 miles.
- Supplemental payments for cost of living adjustments (COLA) are eliminated after age 62 and basic PTD benefits end at age 75 unless the compensable injury precluded the worker from qualifying for social security benefits.
- Supplemental (COLA) payments prior to age 62 are reduced from 5% to 3%.

NCCI Statistical Data shows that Florida's PTD frequency is much higher than the average of other states. Therefore, significant reductions in costs could occur if the revised definition succeeds in limiting the use of PTD. Based upon analysis of the countrywide average PTD frequency, our analysis assumes a 70% reduction in the number of PTD claims (see Exhibit V-B).

NCCI Statistical Data indicates that under SB 50A, future claims that are classified as permanent partial disability (PPD) rather than PTD will see a 30% to 40% decrease from current average indemnity costs (see exhibit V-A). It is also possible that such claims will experience a small decrease in medical costs, since fewer doctors may be involved. Assuming a 40% reduction in average claim costs on the 70% of claims that will be classified as PPD, the savings on

PTD costs would be 28% (70% frequency reduction x 40% decrease in average cost = 28%, see Exhibit V).

COLA payments will be eliminated after age 62 and basic PTD benefits will end at age 75 unless the compensable injury precludes the worker from qualifying for social security benefits. Also, individual COLA payments would be reduced by 40% (from 5% to 3%) prior to age 62. Using

life mortality tables and annuity calculations, it can be demonstrated that the savings on PTD would be 18% (see Exhibit V-C).

Reductions in average medical costs are expected to be much less than the reductions assumed for indemnity because the classification of a claim's injury type (PTD versus PPD) will not normally affect the physical medical services being provided. Doctor shopping and medical evaluation costs may be reduced because percentage impairment and social security disability may not be determining factors under the new law. As a result, savings of 1% are expected on total costs. This is equivalent to 1.7% on medical costs.

Permanent Partial Disability Benefits (PPD)

- For workers returning to work at less than their pre-injury wage, the weekly benefits are increased from 50% to 75% of the temporary total benefit.
- Impairment benefits are reduced by 50% for those injured workers who return to work at their pre-injury wage or more.
- Durations will vary depending on impairment rating; increased for those at least 22% impaired and reduced for the rest.
- Supplemental wage loss benefits are eliminated.
- The portion of the PPD impairment associated with psychiatric impairment is limited to 1%.
- The employer and employee are authorized one independent medical exam (IME) per accident (and not per medical specialty).
- The employer/carrier is responsible for temporary total compensation benefits for an injured worker who requires training and education benefits after attaining maximum medical improvement (MMI) if the worker earns less than 80% of the compensation rate. The duration will be for a period of 26 weeks, which may be extended by an additional 26 weeks, but not in addition to the 104-week limit under temporary total benefits. A worker who refuses to accept training and education forfeits any additional payment for lost wages.

NCCI reviewed DCI data to determine the distribution of costs due to impairment benefits versus supplemental wage loss benefits. A review of statistical plan data provided PPD costs as a percent of total costs. Also, the Florida Division of Workers Compensation data was used to determine the distribution of impairment ratings.

Impairment benefits represent 45% of PPD benefits. For those not returning to work at full wage or more, impairment benefits are expected to rise by 12.3% (see Exhibit IV, line 3). Impairment

benefits will be reduced by 50% for those injured workers who return to work at full wage. Since the eligibility period for these impairment benefits is already relatively short (compared to other states), and is being reduced even further, this feature is expected to be used infrequently. At the same time, the benefit payment itself is being increased by 50%, which provides less incentive for return to work. Nonetheless, additional savings of 5% may result (see Exhibit VI, line 4). There may be an additional savings of 10% due to reductions in indemnity costs relating to the psychiatric impairment limitation and restrictions on IME's (see Exhibit VI, line 5). Additional savings of 10% on PPD may result due to the tightened PTD definition since workers are less likely to receive PTD status. This would presumably reduce that element of leverage that claimants and attorneys currently have when settling PPD claims. The limits placed on training and education benefits are also expected to reduce the amounts of settled PPD claims (see Exhibit VI, line 6).

These changes may also create some minor savings in medical costs if there is less doctor shopping. The expectation is that medical costs will be reduced by 1.7%, which translates into a 1% reduction on overall costs.

Wage loss benefits represent approximately 10% of PPD. SB 50A eliminates

wage loss benefits completely (see Exhibit VI, lines 10 and 11).

Hospital and Physicians' Fees

- The intent of the Legislature is to increase the schedule of maximum reimbursement allowances for physicians effective January 1, 2004, and to pay for the increases through reductions in reimbursements to hospitals.
- The maximum reimbursement amount (MRA) for physicians licensed under Chapters 458 or 459 will be equal to 110% of Medicare or the 1/1/03 Florida Physician MRA, whichever is greater.
- The maximum reimbursement for surgical procedures will be increased to 140% of Medicare or the 1/1/03 Florida Physician MRA, whichever is greater.
- Outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the MRA for non-hospital providers.
- Scheduled outpatient non-emergency radiological and clinical laboratory services not provided in conjunction with a surgical procedure shall be reduced to the MRA for non-hospital providers.
- Outpatient reimbursement for scheduled surgeries will be reduced from 75% of charges to 60% of charges.

- All other hospital outpatient care shall be reimbursed at 75% of usual and customary charges.

An estimate of the impact for the change in medical fees will be determined once the schedule of maximum reimbursement allowances is established by the Three Member Panel. No impact for these changes is included in this filing.

Restrictions on Independent Medical Exams (IME)

- The employer and employee are authorized one independent medical examination per accident (and not per medical specialty).
- The party requesting the IME is responsible for all expenses associated with the IME.
- If the employee prevails, the employer or carrier will pay the cost of the IME.

According to the distribution of medical costs provided by the Florida Division of Workers Compensation, procedures associated with “Evaluation and Management” represent approximately 10.3% of medical costs (see Exhibit VII-B). These services can be characterized as visits, examinations, and consultations. The primary physician typically performs the majority of these services because not all injured workers request an IME. However, we have assumed 1 out of 3 of these services are attributed to an IME. The proposal substantially reduces IME involvement by limiting the number of IME’s to one IME per accident. Assuming IME costs are reduced by 50%, the restrictions on IME’s could result in cost savings of 1.7% on medical costs (10.3% evaluation costs x 33% IME share x 50% reduction = 1.7% see Exhibit VII-A).

Increased Caps on Chiropractic Services

- Maximum allowable visits are increased for chiropractors to 24 treatments or 12 weeks (was 18/8)

Chiropractic care is currently limited to 18 visits/8 weeks of treatment. Prior to implementation of this limitation, chiropractor cost represented approximately 4% of total costs in Florida. After this limitation, costs decreased to less than 1% of total costs (according to WCRI data for AY 1998 evaluated at 6/30/99). SB 50A increases the limits on chiropractic care to 24 visits/12 weeks. We expect that the increase in limitation will be utilized, and as a result, we expect overall costs to increase by 0.25%, which is equivalent to an increase of 0.4% on medical costs (see Exhibit VII-A).

Pharmaceutical Fees

- Reimbursement is reduced to the wholesale price plus a \$4.18 dispensing fee (previously 1.2 times the wholesale price plus a \$4.18 dispensing fee).

Based on prior studies, prescription medicine represents approximately 4% of total costs. Under the new law, the most expensive drugs would have a savings of approximately 16.7%; if all drugs had that maximum savings, the total impact would be less than 0.7%, ($16.7\% \text{ svgs} \times 4\% = 0.67\%$). Low cost drugs would have a smaller savings. (For example, a \$10 drug would have only a 12% savings; if that represented the average prescription savings, the overall savings would be 0.5%.) NCCI has estimated overall savings of 0.6%, which is equivalent to a 1.1% savings on medical costs (see Exhibit VII-A).

Attorney Fees and Dispute Resolution

- Maintains 20/15/10/5 attorney fee schedule
- Alternative hourly fees are eliminated with one exception. An alternative fee of up to \$1500 may be awarded per accident for medical-only petitions.
- Fees are based on benefits secured above the offer only if the employer/carrier makes an offer including attorney fees and attorney fees are "taxed" against the employer/carrier

Based on the data provided by the Florida Division of Workers Compensation, lump sum settlements represent 38.5% of all costs and attorney fees represent approximately 15% of lump sum settlements costs. As a result, attorney fees represent approximately 6% of total costs ($38.5\% \times 15\% = 5.8\%$). Assuming the limits on attorney fees result in a 19.5% reduction in attorney costs, we expect 1.1% savings in overall costs (see Exhibit VIII-B).

As NCCI studies have shown, attorney involvement drives up medical and indemnity costs. The decrease in fees may reduce the incentive for attorneys to handle workers compensation cases, particularly those with less merit. Cases where attorneys are involved are more costly than similar cases without an attorney involved. As a result, the average cost per case will likely be reduced.

Based on DCI data, attorneys are involved in 15% of all cases. Assuming 5% reduction in attorney involvement, we estimate an additional 1% savings in overall system costs due to the lower average cost per case (see Exhibit VIII-A).

Sensitivity testing of other scenarios confirmed the reasonability of this result.

Tightening of Compensability Standards

- Objective relevant medical findings are required. Pain or other subjective complaints, in the absence of objective relevant medical findings, are not compensable.
- Clear and convincing evidence is needed to prove causation of occupational disease or repetitive exposure.

- Work-related accident must be more than 50% responsible for injury and subsequent disability.
- Mental or nervous injury without accompanying physical injury requiring medical treatment is not compensable. The physical injury must be the major contributing cause of the mental or nervous injury. Benefits for mental or nervous injury will not be paid beyond six months after maximum medical improvement (MMI) for the physical injury, or 104 weeks, whichever comes first.

Where a particular class of claims is involved, DCI data was reviewed to estimate what portion of costs come from that type of claim. In Florida, less than 0.1% of costs result from mental injuries without accompanying physical injuries and about 2% of total costs result from occupational disease or repetitive injury.

Provisions dealing with evidentiary burdens of proof and causal connection to work injury, etc., are grouped so that their total effect can be considered.

Statistical data shows that the number of compensable claims in Florida is about average when compared to other states. Tightening compensability is likely to eliminate some claims.

There is no data or methodology to precisely model the effect of changes in compensability standards. However, we estimate that the combined impact of the above provisions may reduce the number of compensable claims by 1%. Any additional impact will be reflected in subsequent data that is collected and used in future rate filings.

Limitation of Impairment Rating for Subsequent Injury

- For subsequent injuries, only disabilities associated with the compensable accident will be considered when determining the impairment rating.

HB 1933, enacted in 1998, eliminated reimbursements to employers/insurers for subsequent injuries. As a result, carriers (rather than the Subsequent Injury Fund) are now responsible for full payment of these types of claims. On

November 6, 1998, the Florida Department of Insurance determined that the rate impact was 1.5% (see Exhibit IX). Under this provision of SB 50A, the portion of the injury related to the previous injury would no longer be compensable. We estimate this will result in savings of 1.0% on overall costs. The full impact of 1.5% is not warranted because the data underlying the current rates still reflects some subsequent injury reimbursements.

Construction Exemptions and Enforcement

Potential Impact (NOT included in -14%): -4.0% for contractors classifications

Source: Prior NCCI analysis, Division of Workers Compensation, Coble study on loss of premium attributable to fraud and exemptions SB 50A significantly limits exemptions and increases compliance and enforcement activities. Some of the key provisions include:

Exemptions:

- Tightens the definition of who may exempt themselves from coverage under the workers compensation law. Sole proprietors and partners cannot exempt themselves if they are actively engaged in the construction industry. Eliminates the exclusion of exemption for officer, sole proprietor or partner engaged in a construction project on a commercial building project with an estimated valued at or greater than \$250,000.
- Officer who once held an exemption cannot be considered an employee until revocation of exemption on file with the Department of Financial Services (DFS).
- Notice of election of exemption must be accompanied by stock certificate showing that the officer owns 10% or more of the company.
- Must be listed as an officer with Division of Corporations in order to obtain exemption (used to be able to provide affidavit).
- Exemption applies only to officer named on the certificate and only for the scope of business or trade listed.
- Exemptions can be revoked if requirements are no longer met.
- Officer who elects to claim an exemption may not recover benefits or compensation.

Compliance/enforcement:

- DFS has the power not only to make sure employers have secured coverage, but also to make sure payroll and class codes are correct; DFS can conduct inspections and investigations, issue and enforce stop work orders, levy assessments, seek injunctions, etc.
- Stop work orders will apply to all of an employer's sites of business in the state.
- Employers must produce required business records to DFS within 5 business days after request, or face stop work order.
- Stop work orders continue until the issuance of an order releasing stop work

order issued.

- DFS can place employers on probation for 2 years after stop work order and require periodic reports.
- Stop work orders and penalty assessments apply to successor corporations and affiliated business entities engaged in same enterprise.
- Corporate officer affiliated to a person delinquent in paying stop-work order and penalty assessment is ineligible for election of exemption.
- Penalties of \$1000 per day for violation stop work order (formerly \$100).
- Subsequent violations within 5 years deemed a knowing act (felony).
- Penalty of \$5,000 for each employee who the employer asserts is an independent contractor but who is subsequently determined by DFS not to be an independent contractor.
- Carrier has to report to DFS any information related to applying premium to insured based on payroll of person possessing exemption.
- Employer failure to pay penalties will result in referral to appropriate licensing authority.
- If DFS determines an employer has avoided appropriate premium, carrier has to conduct a physical audit within 30 days and provide the audit report to DFS; carrier can also cancel and conduct an audit in conjunction with cancellation.

NCCI has estimated that the provisions in SB 50A related to limitations on exemptions, enforcement, and compliance may result in a potential 4% savings on contractors' rates. We have related these potential savings to contractors' rates because the limitations on exemptions apply to construction exemptions, and the Division of Workers Compensation focuses its enforcement and compliance efforts almost exclusively on the construction industry. Because of the extreme level of uncertainty regarding the level of compliance that will be achieved under this law, NCCI is unable to attribute any potential savings for the limitations on exemptions, enforcement, and compliance in the overall estimated impact of the law. Actual savings that are achieved will be reflected in the experience as it is incorporated into future rate filings.

The development of the estimation of a potential 4% savings on contractors rates combined with enhanced enforcement/compliance is based primarily on three sources of information:

1. In January 2002, NCCI provided a detailed analysis, which explained the difficulty of pricing the TOTAL elimination of construction exemptions. We concluded as follows:

"The impact of this bill will vary considerably depending upon the level of compliance achieved and the amount of additional exposure and losses that may accompany any additional policies.

Since there is too much uncertainty involved with the level of compliance and with the additional losses that may result, obtaining preliminary data after the effective date of this bill will be critical in determining an impact.

The necessary data elements are: (1) the number of contractor policies (to gauge the level of compliance) and (2) early loss reports from contractor policies - such as First Reports Of Injury (to gauge the additional amount of losses that will also enter the system)." SB 50A does not totally eliminate construction exemptions. It is unclear whether the limitation on construction exemptions will result in any fewer exemptions. Partners and sole proprietors may incorporate in order to retain their exemptions. Other current exemption holders may decide to go without workers compensation insurance.

2. A memo from the Division of Workers Compensation that estimates the additional premium that the Division could bring into the system with additional investigators and enforcement/compliance authority.

3. NCCI's review of the Coble study on loss of premiums attributable to fraud and exemptions.

Based upon the above sources and lack of any other available information, NCCI concluded it was not reasonable to measure savings on contractors' rates until NCCI can perform a study or review data that becomes available after the implementation of SB 50A.

Practice Parameters

- Adopts the practice parameters of the US Agency for Healthcare Research and Quality in effect as of 1/1/03.

In 1993, the Legislature enacted FL ST 440.13(15), which required AHCA to

develop practice parameters for the top 10 medical procedures relevant to workers compensation. By the statutory deadline, only two guidelines had been developed - low back pain and neck pain. Since the statutory deadline, a third practice parameter has been developed. However, it appears that past history in Florida has shown that practice parameters have had little if any positive impact.

We also looked at the effectiveness of practice parameters in workers compensation in other states. Some of the common problems associated with practice parameters include:

1. Practice parameters are drafted in a manner that is loose/vague and do not set any real boundaries
2. Lack of knowledge in the medical and/or insurance community of the existence of practice parameters

3. If knowledge existed, lack of adherence to practice parameters
4. Lack of enforcement if treatment is outside the bounds of practice parameters
5. Judicial rulings that allow treatment outside the bounds of practice parameters

Unless each of the above problems is effectively addressed, it is possible that practice parameters could add cost to the system.

FL SB 50A adopts the practice parameters of the US Agency for Healthcare Research and Quality in effective 1/1/03. No reasonable assumptions can be made regarding whether these specific practice parameters will produce savings in Florida. No reasonable assumptions can be made regarding whether the specific practice parameter enforcement measures in SB 50A will be effective in Florida. Until NCCI can perform a study or review data on practice parameters, which becomes available after the implementation of SB50A, it is not possible to make any reasonable estimates regarding the impact of this proposal.