

August 26, 2011

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Workers Compensation Insurance

NCCI Item RM-W-8039 - Establishment of Basic Manual
Rule 4-H – Producer Fees

The North Carolina Rate Bureau has adopted and the North Carolina Commissioner of Insurance has approved the adoption of changes to NCCI's Basic Manual for Workers Compensation and Employers Liability Insurance. The effective date of the change is January 1, 2012.

The purpose of this filing is to: (1) create a national residual market producer fee rule that will be located in the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance under Rule 4-H, (2) update Assigned Carrier Performance Standard 3 – Underwriting to include Rule 4-H and (3) identify North Carolina state rule exceptions applicable to Rule 4-H – Producer Fees.

The attached circular provides a more detailed explanation of the changes.

This filing was made with the Department of Insurance on behalf of all member companies, and no additional filing is needed by the carrier.

Contact the Information Center at 919-582-1056 or via email at wcinfo@ncrb.org if you require additional information.

Sincerely,

Sue Taylor

Director of Insurance Operations

ST:dms

C-11-6

FILING MEMORANDUM

ITEM RM-W-8039—ESTABLISHMENT OF BASIC MANUAL RULE 4-H—PRODUCER FEES

(To become effective 12:01 a.m. on January 1, 2012, applicable to new and renewal assigned risk policies only.)

PURPOSE

This item:

- Creates a national residual market producer fee rule, incorporating corresponding producer fee tables to be located in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance* as Rule 4-H
- Clarifies producer fee requirements in NCCI's *Assigned Carrier Performance Standards (ACPS)* in PS 3-G—Producer Fees
- Reorganizes producer fee information currently in the *Basic Manual* Workers Compensation Insurance Plan (WCIP) Rule 4-A-3-I(1) and (2) to new Rule 4-H

BACKGROUND

In accordance with *Basic Manual* Rule 4-A—Workers Compensation Insurance Plan (WCIP) or appropriate state plan, assigned carriers must pay a producer fee to the licensed producer and/or agency on all new and renewal assigned risk workers compensation insurance policies after policies are issued.

Similar to the approach taken with the revision of other NCCI manuals, rating plans, and programs, NCCI, as Plan Administrator, initiated a complete review and update of the national and state-specific procedures to address producer fees.

NCCI is proposing to expand *Basic Manual* Rule 4 to include Rule 4-H. The new producer fee rule incorporates key elements from the current processes and procedures into one complete rule in *Basic Manual* Rule 4-H. To implement *Basic Manual* Rule 4-H, revisions must be made to NCCI's *Basic Manual* Rule 4-A-3-I, the *ACPS* in PS 3-G, and the *Assigned Risk Supplement (ARS)*, which currently houses producer fee procedures and percentage scales. For purposes of this item, the scales are being relocated to *Basic Manual* Rule 4-H; however, the actual national and state-specific producer fee scales and percentages have not been changed.

The revisions proposed in this item identify three themes that provide the focus for improving the customer experience:

1. National Approach

In creating a national producer fee rule, the current national *ARS* procedures, *Basic Manual* Rule 4-A, and any state-specific processes and rules were reviewed to determine the consistent elements among all of the states. Individual state rules have been incorporated within the new national *Basic Manual* Rule 4-H, and state exceptions have also been maintained where appropriate.

2. Accessibility and Usability

The creation of the national producer fee rule as *Basic Manual* Rule 4-H enables the user to access information without navigating through various manuals.

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3. Use of Plain Language

Customers have responded favorably to the plain language presentation of NCCI's 2001 *Basic Manual*. To continue with this approach, *Basic Manual* Rule 4-H is written in simpler language and presented in a more user-friendly way. Tables have been included where appropriate.

PROPOSAL

The following is a summary of key elements and exhibits proposed in this item:

EXHIBIT 1—National Basic Manual 4-H:

Rule 4-H-1—General Explanation & Requirements

Establishes the foundation for the new rule and includes a general explanation and the requirements assigned carriers must adhere to for paying producer fees.

Rule 4-H-2—Licensing Requirements

Details the responsibilities of the assigned carriers to confirm proper licensing of producers and/or agencies for application submission, policy term, renewals, and multistate policies.

Rule 4-H-3—Producer Changes

Provides procedures for making producer changes.

Rule 4-H-4—Premium Basis

Provides the basis on which assigned carriers pay producer fees. A Premium Basis Table has been created to provide state-specific premium details.

Rule 4-H-5—Payment Information

Provides payment information for producer fees on policies where premium is collected from the policyholder versus treatment of uncollected premium and referral to a collection agency.

Rule 4-H-6—Producer Fee Tables

Producer Fee Percentage Scales, currently located in NCCI's non-filed *ARS*, will be relocated to Rule 4-H. Current Graduated A Scale Table and Graduated A Scale Interval Table have been reestablished as two national tables since they apply in the majority of NCCI states. States with different tables or flat fees have state exceptions to the national tables. The premium ranges and percentages have not been revised as part of this item. Additionally, the 1% flat fee paid on policies with occupational disease coverage under the Federal Mine Safety and Health Act has been retained in states where needed.

Rule 4-H-7—Producer Disputes

Provides information regarding the dispute process for producer fees.

EXHIBIT 2—Basic Manual Rule 4-A-3-I(1):

Restates the authority to pay producer fees on assigned risk policies. Also, relocates a portion of rule 4-A-3-I(1) to new Rule 4-H.

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EXHIBIT 3—Assigned Carrier Performance Standards—PS 3-G—Producer Fees:

Language has been added to PS-3 to clarify information regarding assigned carriers' responsibilities regarding producer and/or agency licensing requirements, as well as payment and collection of producer fees.

EXHIBITS 4 and 5 contain state-specific exceptions that may be needed in conjunction with *Basic Manual* Rule 4-H.

IMPACT

There is no expected impact to statewide premium as a result of this item since no changes are being made to premium calculations. It is anticipated that the establishment of *Basic Manual* Rule 4-H will enhance the producers' and assigned carriers' understanding of how producer fees are paid for assigned risk policies.

IMPLEMENTATION

It is proposed that the attached exhibits be implemented in all states, effective 12:01 a.m. on January 1, 2012, applicable to new and renewal assigned risk policies only.

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ITEM RM-W-8039—ESTABLISHMENT OF BASIC MANUAL RULE 4-H—PRODUCER FEES

EXHIBIT 1
BASIC MANUAL—2001 EDITION
RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES
(Applies in: AK, AL, AR, AZ, CT, DC, GA, IA, ID, IL, IN, KS, MS, NC, NH, NV, OR, SC, SD,
VT, WV)

H. PRODUCER FEES**1. General Explanation and Requirements**

- a. For purposes of this rule, producer means a licensed insurance agent, broker, or insurance representative, as defined in the state insurance law, regulation, and/or rule, whose privileges under this Workers Compensation Insurance Plan (Plan) have not been suspended or revoked, designated by the employer or applicant applying under this Plan to secure and maintain workers compensation and employers liability insurance on behalf of the employer applying for coverage under this plan and not as an agent of the Plan Administrator or of any assigned carrier for Plan business. Also, for purposes of this rule:
- (1) Producer fees may be referred to as producer fees, fees, or commissions.
 - (2) Proper producer licenses and producer licensing refer to resident or nonresident producer and/or agency licenses as applicable.
 - (3) Plan Administrator is defined in accordance with Rule 4-A-2-p or applicable state workers compensation insurance plan approved for use in a state.
 - (4) WCIP is defined in accordance with Rule 4-A-2-y or applicable state workers compensation insurance plan approved for use in a state.
 - (5) Anniversary rating date does not apply.
- b. Rule 4-A-3-l, or applicable state workers compensation insurance plan approved for use in a state, provides the authority for the fees that must be paid by an assigned carrier to a licensed agency for all new and renewal assigned risk policies for which the agency is the agency of record.
- c. Assigned carriers must have and adhere to internally documented state producer and agency licensing requirements for payment of producer fees.
- d. To be paid a fee, a producer and/or agency must be properly licensed in the state(s) for which new and/or renewal policies are issued. It is the assigned carrier's responsibility to determine whether or not the producer and/or agency is properly licensed in the appropriate jurisdictions for payment of fees. Producer fee checks are made payable to the licensed agency of record rather than to the individual licensed producer, unless they are one and the same.
- e. Only one producer and agency can be recognized by the assigned carrier at any one time for a single policy. The producer of record and agency of record are the producer and agency designated on the application unless the producer and/or agency changes during the policy period in accordance with Rule 4-H-3-a.

2. Licensing Requirements**a. Application Submission**

- (1) Subject to Rule 4-H-2-a(4) below, when an assigned risk ACORD® 133 application is submitted to the Plan Administrator, the producer must include the proper producer license number and agency license number (resident or nonresident, depending on state law, regulation, and/or rule) in the Producer's Certification section of the application.
- (2) If the producer is **not** properly licensed (e.g., expired licenses, lack of an applicable nonresident license) the assigned carrier will accept the assignment, but the producer fee will **not** be paid to the producer listed on the application. However, for all other purposes, the unlicensed representative is treated as the producer of record.

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EXHIBIT 1 (CONT'D)
BASIC MANUAL—2001 EDITION
RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES
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- (3) If the employer has designated a representative (e.g., attorney) that is not a licensed producer, the assigned carrier will accept the assignment, but the producer fee will not be paid to the designated representative on the application. For all other purposes, the unlicensed representative is treated as the producer of record.
- (4) When the assigned carrier receives the WCIP binder package from the Plan Administrator, it must confirm proper producer and/or agency licensing in the appropriate state(s).

b. Continuing License Verification—During Policy Term and Renewals

- (1) At renewal, the assigned carrier must confirm proper producer and/or agency licensing in the appropriate states.
- (2) If, during the policy period, an assigned carrier obtains written documentation that a producer's and/or agency's license has been suspended or revoked by a particular state(s), the producer and/or agency will be terminated as the producer of record, will no longer be eligible for producer fees, and will no longer be treated as the producer of record. If the producer and/or agency appeals the suspension or revocation of their license and subsequently wins their appeal, the producer and/or agency will not be paid producer fees retroactively.
- (3) Subject to Rule 4-H-1-c, if the agency of record is still properly licensed even though the producer is not licensed, the agency will continue to be paid producer fees and will continue as the agency of record.

c. Multistate Policies

On a multistate policy, a fee is paid only in the state(s) in which the producer and/or agency is properly licensed. If a policy covers two or more states, and the producer and/or agency is properly licensed in:

- (1) Only one of the states, the fee is paid only on the premium and premium basis for the state in which the producer and/or agency is licensed.
- (2) Two or more of the states, the fee is paid on all premiums for all states in which the producer and/or agency is licensed, based on each state's premium basis in accordance with Rule 4-H-4-a, and percentage in accordance with Rule 4-H-6. A fee is not paid on any premium for a state in which a producer and/or agency is not licensed.

3. Producer Changes

- a. A policyholder may change its producer and/or agency of record by providing written notice to the assigned carrier. Such written notice is generally, in the form of a "producer of record" letter, indicating the new producer and/or agency information and the requested effective date of the change.
- b. Such requests must be made before the renewal policy effective date or with the consent of the assigned carrier at another agreed upon time. The assigned carrier is not required to make such a change before renewal, but changes typically become effective as of the date of renewal. The policyholder must contact the assigned carrier for its requirements.

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**EXHIBIT 1 (CONT'D)
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4. Premium Basis

a. General Information

Producer fees are paid in accordance with the following Premium Basis Table. Refer to the applicable state assigned risk workers compensation premium algorithm for the premium elements included in each premium basis. Premium may be adjusted due to endorsements and preliminary, interim, and final audits, which may result in an adjustment to the producer fee.

Premium Basis Table

State	Premium Basis
AL, AR, AZ, CT, DC, IA, ID, IN, KS, MS, NH, NV, OR, SC, SD, VT, WV	Total Standard Premium charged and collected
AK, GA, IL	Total Annual Premium charged and collected
NC	Final Audited Annual Premium
All states	If the minimum premium becomes the total policy premium, the producer fee is paid on the entire minimum premium

b. LSRP Policies

In states in which LSRP applies:

- (1) Producer fees are paid based on premium in accordance with Rule 4-H-4-a, **not** LSRP Standard Premium as defined in Rule 4-C-5-c(12).
- (2) Producer fees are **not** paid on the LSRP contingency deposit.
- (3) No additional producer fee is payable or return commission chargeable as a result of LSRP valuation activity.

5. Payment Information

- a. The assigned carrier pays fees in accordance with Table 1—Collected Premium and Table 2—Exceptions below:

Table 1—Collected Premium

If premium is charged and collected from the policyholder and the . . .	Then the assigned carrier must process and mail fee payments within 30 days of the . . .
<ul style="list-style-type: none"> • Producer fee meets or exceeds \$25, or • The policy is a minimum premium policy 	<ul style="list-style-type: none"> • Date that the assigned carrier issues the policy in accordance with the applicable Performance Standard, or • Receipt of premium

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**EXHIBIT 1 (CONT'D)
 BASIC MANUAL—2001 EDITION
 RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES
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Table 1—Collected Premium (Cont'd)

<u>If premium is charged and collected from the policyholder and the . . .</u>	<u>Then the assigned carrier must process and mail fee payments within 30 days of the . . .</u>
<u>Producer fee is less than \$25</u>	<ul style="list-style-type: none"> • <u>Date of reaching a cumulative total of \$25 per agency, or</u> • <u>Date the withholding time period exceeds six months, or</u> • <u>Request for payment, or</u> • <u>Whichever is earlier</u>

Table 2—Exceptions

<u>If premium is not collected and the account . . .</u>	<u>Then producer fees are . . .</u>
<u>Has not yet been referred to an outside collection agency</u>	<u>Not paid on any uncollected premium until the premium is collected and the fees meet the requirements in Table 1—Collected Premium</u>
<u>Has been referred to an outside collection agency</u>	<u>Never paid on any balance that is referred to the outside collection agency, even if the balance is subsequently collected</u>

- b. Producers and/or agencies must return fees to the assigned carrier in a timely manner when return premiums are generated. The fee payment may also be applied to return fees that the producer and/or agency may owe to the carrier from other assigned risk policies for that agency. The assigned carrier may be required to report the producer and/or agency to the appropriate regulatory authority(ies) if return fees are not paid as billed by the assigned carrier.
- c. Except where allowed by state law, the producer may **not** deduct the producer fee when sending in the deposit or a payment. The assigned carrier will forward the fee as appropriate.

6. Producer Fee Tables

The fee paid by the assigned carrier for all policies must be in accordance with the Graduated Table or Graduated Interval Table.

Graduated Table

Premium Dollar Amount (\$)	Producer Fee Percentage (%)
<u>First 1,000</u>	<u>8.0</u>
<u>Next 4,000</u>	<u>5.0</u>
<u>Next 95,000</u>	<u>3.0</u>
<u>Over 100,000</u>	<u>2.0</u>

ITEM RM-W-8039—ESTABLISHMENT OF BASIC MANUAL RULE 4-H—PRODUCER FEES

**EXHIBIT 1 (CONT'D)
BASIC MANUAL—2001 EDITION
RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES
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Graduated Interval Table

<u>Premium Interval (\$)</u>	<u>Producer Fee Percentage (%)</u>	<u>Premium Interval (\$)</u>	<u>Producer Fee Percentage(%)</u>
<u>0–1,017</u>	<u>8.0</u>	<u>6,668–7,027</u>	<u>4.9</u>
<u>1,018–1,053</u>	<u>7.9</u>	<u>7,028–7,429</u>	<u>4.8</u>
<u>1,054–1,091</u>	<u>7.8</u>	<u>7,430–7,879</u>	<u>4.7</u>
<u>1,092–1,132</u>	<u>7.7</u>	<u>7,880–8,387</u>	<u>4.6</u>
<u>1,133–1,176</u>	<u>7.6</u>	<u>8,388–8,966</u>	<u>4.5</u>
<u>1,177–1,224</u>	<u>7.5</u>	<u>8,967–9,630</u>	<u>4.4</u>
<u>1,225–1,277</u>	<u>7.4</u>	<u>9,631–10,400</u>	<u>4.3</u>
<u>1,278–1,333</u>	<u>7.3</u>	<u>10,401–11,304</u>	<u>4.2</u>
<u>1,334–1,395</u>	<u>7.2</u>	<u>11,305–12,381</u>	<u>4.1</u>
<u>1,396–1,463</u>	<u>7.1</u>	<u>12,382–13,684</u>	<u>4.0</u>
<u>1,464–1,538</u>	<u>7.0</u>	<u>13,685–15,294</u>	<u>3.9</u>
<u>1,539–1,622</u>	<u>6.9</u>	<u>15,295–17,333</u>	<u>3.8</u>
<u>1,623–1,714</u>	<u>6.8</u>	<u>17,334–20,000</u>	<u>3.7</u>
<u>1,715–1,818</u>	<u>6.7</u>	<u>20,001–23,636</u>	<u>3.6</u>
<u>1,819–1,935</u>	<u>6.6</u>	<u>23,637–28,889</u>	<u>3.5</u>
<u>1,936–2,069</u>	<u>6.5</u>	<u>28,890–37,143</u>	<u>3.4</u>
<u>2,070–2,222</u>	<u>6.4</u>	<u>37,144–52,000</u>	<u>3.3</u>
<u>2,223–2,400</u>	<u>6.3</u>	<u>52,001–86,667</u>	<u>3.2</u>
<u>2,401–2,609</u>	<u>6.2</u>	<u>86,668–107,619</u>	<u>3.1</u>
<u>2,610–2,857</u>	<u>6.1</u>	<u>107,620–118,947</u>	<u>3.0</u>
<u>2,858–3,158</u>	<u>6.0</u>	<u>118,948–132,941</u>	<u>2.9</u>
<u>3,159–3,529</u>	<u>5.9</u>	<u>132,942–150,667</u>	<u>2.8</u>
<u>3,530–4,000</u>	<u>5.8</u>	<u>150,668–173,846</u>	<u>2.7</u>
<u>4,001–4,615</u>	<u>5.7</u>	<u>173,847–205,455</u>	<u>2.6</u>
<u>4,616–5,098</u>	<u>5.6</u>	<u>205,456–251,111</u>	<u>2.5</u>
<u>5,099–5,306</u>	<u>5.5</u>	<u>251,112–322,857</u>	<u>2.4</u>
<u>5,307–5,532</u>	<u>5.4</u>	<u>322,858–452,000</u>	<u>2.3</u>
<u>5,533–5,778</u>	<u>5.3</u>	<u>452,001–753,333</u>	<u>2.2</u>

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**EXHIBIT 1 (CONT'D)
 BASIC MANUAL—2001 EDITION
 RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES
 (Applies in: AK, AL, AR, AZ, CT, DC, GA, IA, ID, IL, IN, KS, MS, NC, NH, NV, OR, SC, SD,
 VT, WV)**

Graduated Interval Table (Cont'd)

<u>Premium Interval (\$)</u>	<u>Producer Fee Percentage (%)</u>	<u>Premium Interval (\$)</u>	<u>Producer Fee Percentage(%)</u>
5,779–6,047	5.2	753,334–2,260,000	2.1
6,048–6,341	5.1	2,260,001 and over	2.0
6,342–6,667	5.0		

7. Producer Disputes

For information about disputes relating to the calculation and/or payment of producer fees and producer of record changes, refer to Rule 4-A-10-b(2) or the applicable state workers compensation insurance plan approved for use in a state.

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EXHIBIT 3
ASSIGNED CARRIER PERFORMANCE STANDARDS—2009 EDITION
PERFORMANCE STANDARD 3—UNDERWRITING

(Applies in: AK, AL, AR, AZ, CT, DC, DE, GA, IA, ID, IL, IN, KS, MS, NC, NH, NJ, NV, OR,
SC, SD, VT, WV)

Approval required in: AK, AR, DE, GA, IN, KS, MS, NH, OR, SD

G. PRODUCER FEES

1. Assigned carriers must adhere to *Basic Manual* Rules 4-A-3-~~(4)~~ and 4-H and regulatory requirements for payment of producer fees.
2. Assigned carriers must have and adhere to internally documented state producer and agency licensing requirements for payment of producer fees.
3. It is the assigned carrier's responsibility to determine whether or not the producer and/or agency is properly licensed in the appropriate jurisdictions for payment of fees.
4. Assigned carriers must make a diligent effort to collect producer fees due to them from producers as determined by the Plan Administrator.

EXHIBIT 4
BASIC MANUAL—2001 EDITION
NORTH CAROLINA STATE RULE EXCEPTIONS
RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES
H. PRODUCER FEES

2. Licensing Requirements

a. Application Submission:

Change Rule 4-H-2-a(1) as follows:

Rule 4-H-2-a(1) is not applicable in North Carolina.

Change 4-H-2-a(3) as follows:

Rule 4-H-2-a(3) is not applicable in North Carolina.

6. Producer Fee Tables

Change Rule 4-H-6 as follows:

The producer fee paid by the assigned carrier must be a 5% flat fee applied to the state final audited annual premium charged and collected.

In addition to the 5% flat producer fee, the producer fee for policies with **occupational disease coverage** subject to the Federal Mine Safety and Health Act is a 1% flat fee applied to the state final audited annual premium charged and collected specifically for that coverage.

If occupational disease coverage for the Federal Mine Safety and Health Act is **not** provided on the policy, the 1% flat fee is **not applicable** even if a policy provides traumatic coverage for operations subject to the Federal Mine Safety and Health Act.

Change the Graduated Table in Rule 4-H-6 as follows:

The Graduated Table does not apply in North Carolina.

Change the Graduated Interval Table in Rule 4-H-6 as follows:

The Graduated Interval Table does not apply in North Carolina.