



Overview of the Proposed Florida Workers Compensation Rate Filing **Effective January 1, 2021**

I. Summary of Filing

The purpose of this overview is to provide context and further explanation for the accompanying proposed workers compensation insurance rate filing that was filed under separate cover by the National Council on Compensation Insurance (NCCI) on August 27, 2020, with the Florida Office of Insurance Regulation (OIR) for its review and approval. NCCI is a licensed rating organization authorized to make recommended rate filings on behalf of workers compensation insurance companies in Florida. NCCI's filing is objectively prepared, in compliance with actuarial standards. The filing proposes a -5.7% average rate level decrease in the voluntary market effective January 1, 2021.

This filing comes at a time when, nationally, the workers compensation system is experiencing unprecedented results. The combination of underwriting discipline, moderating severity, declining frequency, and adequate reserves has resulted in six straight years of combined ratios under 100% (below 100% is indicative of an underwriting profit). For decades, with few annual exceptions, frequency has continued on a clear downward path driven by technology, safer workplaces, improved risk management, and a long-term shift from manufacturing to service sectors. NCCI has no expectation that this trend will change course. For the last several years, severity trends have remained fairly moderate, tracking very closely with wage inflation. For these reasons, NCCI's analysis has indicated decreases across most of its jurisdictions in recent years.

The filing is based on experience data as of year-end 2019 from Policy Years 2017 and 2018. Favorable experience has been observed in each of these years. Florida's lost-time claim frequency continues its decline while the state's average indemnity and medical costs per lost-time claim have exhibited relatively more year-to-year volatility. The final proposed rate level change results after incorporating changes to several expense components.

II. Overview of Ratemaking Methodology

NCCI's approach to determining the proposed overall average rate level change utilizes widely accepted actuarial ratemaking methodologies. The approach employed in this filing includes the following steps:

- Premium and loss information is adjusted to the latest approved rate and benefit levels
- These adjusted losses and premiums are used to calculate a loss ratio for each historical year (loss ratio = losses / premium)
- Loss ratios, along with other information, are analyzed in order to determine trend factors. Trend factors are applied to historical loss ratios to estimate loss ratios for the effective period in this filing.
- As a final step, any proposed benefit and/or expense changes are applied to the projected loss ratios

The average rate level change indicated by the data is calculated for the years in the filing's experience period. If the final projected loss ratios are greater (less) than 1.000, then an increase (decrease) in the average rate level is indicated.

Once the proposed voluntary rate level change is determined, NCCI separately determines rates for each workers compensation job classification (class); the rates and year-over-year changes vary by class and are based on the available data for each job class.

III. Impact of the *Castellanos* Decision

In 2016, a Florida Supreme Court decision in the case of *Castellanos v. Next Door Company, et al.* brought about retroactive changes to claimant attorney fee levels for workers compensation insurance. An assessment of the emerging impact of the *Castellanos* decision on Florida's workers compensation marketplace was undertaken as part of last year's rate filing pursuant to the *Order on Rate Filing* issued by the OIR on October 31, 2017. As part of this year's filing review, NCCI again reviewed insurance company feedback, the change in claimant attorney fees, and the change in loss ratios that have occurred since the *Castellanos* decision.

Insurance Company Feedback

Individual feedback was obtained from the state's largest workers compensation writers reporting financial data to NCCI. Feedback received this year was very consistent with and largely unchanged from that received last year. Most carriers said they experienced claim cost increases after the Supreme Court's decision. Since 2016, increases in claimant attorney fees were reported by all carriers interviewed. The carriers reported that over the last couple of years claimant attorneys have increasingly become involved with:

- relatively smaller claims, such as those focused on obtaining a slight change to the injured worker's average weekly benefit
- types of claims that went without representation prior to the *Castellanos* decision

Carriers reported that litigated claims generally take longer to close and are costlier when compared with non-litigated claims. Some carriers reported that litigated claims now represent a relatively larger portion of their book of business versus their experience prior to the *Castellanos* decision.

Claimant Attorney Fees

Claimant attorney fees are reported as indemnity losses in the NCCI Financial Call data on which this filing is based. An analysis of these loss development factors shows a marked increase for valuation dates before and after the *Castellanos* decision. The increase in claimant attorney fees communicated by the carriers is supported by data obtained from the Florida Division of Administrative Hearings (DOAH). DOAH data received through the middle of June 2020 shows that claimant attorney fee percentages have increased from 13% prior to the *Castellanos* decision to more than 20% in recent years. The derivation of the claimant attorney fee percentages by year is shown in the rate filing.

Loss Ratios

A review of Florida's historical indemnity paid loss ratios illustrates two general patterns. When focused on a single year, results are worsening over time. The impact of the *Castellanos* decision has likely contributed to this pattern. When looking across years, results are improving over time. This pattern is consistent with the very favorable WC industry results observed countrywide over this period.

The combination of two counteracting impacts has contributed to the current state of the Florida WC system. To date, the especially-favorable WC industry results observed across the country have more than offset the observed cost increases associated with the *Castellanos* decision.

IV. COVID-19

The COVID-19 virus (coronavirus) is the latest in a series of infectious diseases that have emerged over the last 20 years. Since 2003, the world has seen the emergence of SARS, H1N1, Ebola, and Zika viruses. While the overall impact of each of those diseases has been well documented, potential impact of COVID-19 to the workers compensation system is in the very beginning stages of being understood; therefore, the data underlying this filing does not include claims from COVID-19. Due to the lack of this COVID-19-related ratemaking data and the current level of uncertainty, NCCI has not yet assessed the potential impact on future rate levels. As such, no explicit adjustments have been made in this filing for COVID-19. While it is possible that COVID-19 may result in significant adverse loss development and deteriorating loss ratios, the impact on overall system costs could be small.

It is reasonable to believe COVID-19 will give rise to component changes that may, to some extent, have offsetting impacts on system costs. For example:

- There could be an increase in the number of compensable workers compensation claims arising in frontline, COVID-19-related occupations
- There could be a decrease in workers compensation claims due to the increased number of employees who are teleworking

Short- and long-term COVID-19-related impacts may also differ. For example:

- In the short term, during the COVID-19 pandemic, there may be a reduction in the number of physical therapy sessions attended by injured employees and/or a deferral in the number of workers compensation-related surgeries that are not deemed to be immediately critical
- Over the longer term, an increase in these types of services may be expected as the current burden on medical-related personnel and facilities is lessened
- In economic downturns, workers may forego filing claims for relatively minor injuries to maintain active employment as the economy navigates these uncertain times—leading to temporary downward pressure on claim frequency

NCCI has begun researching and gathering information to preliminarily gauge the pandemic's direct and indirect impacts on claim frequency, severity, and durations. More in-depth analyses related to COVID-19's impact on frequency and severity will be conducted over time as additional aggregate data becomes available. It is anticipated that assessing the impact of the pandemic on claim durations will likely take longer, as claim-specific data would be required.

NCCI has also started accumulating pre-COVID-19-level benchmarks that will help facilitate pre- to post-COVID-19 comparisons in the future. For example, detailed medical reports along with associated metrics are being developed to analyze both the direct impacts (e.g., claim costs) and indirect impacts (e.g., whether the slowdown of medical treatments has returned to normal) of the COVID-19 pandemic.

In April 2020, NCCI published a white paper, "COVID-19 and Workers Compensation: Modeling Potential Impacts," which provides estimates of workers compensation system cost impacts under various hypothetical scenarios. NCCI also released an interactive tool that allows users to choose their own assumptions and model the potential impact to expected losses for the associated jurisdiction and workforce under the scenario framework described in the research brief. These and other related materials are available on NCCI's website at www.ncci.com.