STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
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GOVERNOR

JULIE MIX MCPEAK
COMMISSIONER

BULLETIN

TO: All Workers' Compensation Insurance Carriers Writing Business in Tennessee

FROM: Julie Mix McPeak, Commissioner

RE: Waiver of Subrogation Endorsement

DATE: May 19, 2015

The purpose of this Bulletin is to restate the Department's position with respect to the use of the Waiver of Our Right to Recover from Others Endorsement - WC 00 03 13 (also known as the waiver of subrogation endorsement) in this State. The language of this endorsement operates as a waiver of a person's right to collect from a responsible party. It is the position of the Department that the waiver of subrogation endorsement is permitted and insurers may apply a fee or charge in connection with the waiver.

The Waiver of Our Right to Recover from Others Endorsement is found in the ***Forms Manual*** published by the National Council on Compensation Insurance (NCCI). Additional information is provided in NCCI's ***Basic Manual*** Rule 3-A-22. The waiver endorsement states "We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule."

Tenn. Code Ann. § 56-5-320 requires all workers' compensation insurers adhere to the policy forms and rating rules filed by the Commissioner's designated rate service organization. The Commissioner's designated rate service organization is NCCI. Therefore, pursuant to Tenn. Code Ann. § 56-5-320 and NCCI's ***Basic Manual*** Rule 3-A-22, effective July 1, 2015, the premium for this endorsement is allowed, "based on a charge determined by the carrier from its evaluation of the exposure" in the voluntary market. Additionally, "[t]he additional premium charge for assigned risk policies is 5% of the manual premium developed in conjunction with the work for which that waiver is provided, subject to a $250 minimum premium charge per waiver."

This Bulletin effectively repeals Departmental guidance from April 22, 2004, that took an alternative position on this matter and prohibited a fee or charge in connection with such waiver.

Any questions about the intent of this Bulletin should be directed to the Insurance Division's Policy Analysis Section, 7th Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, and/or telephone number (615) 741-2825.