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BULLETIN

TO: All Property and Casualty Carriers and Rate Service Organization

FR: Paula A. Flowers, Commissioner Paula A. Flowers
Department of Commerce and Insurance

RE: Application of Tenn. Code Ann. § 56-5-309(b) Review for aggrieved persons

DT: August 26, 2005

The purpose of this Bulletin is to communicate the Department's position regarding the Workers' Compensation Appeals Board. Effective March 1, 2005, the Workers' Compensation Appeals Board will no longer adjudicate disputes on behalf of the Department as filed by the National Council on Compensation Insurance, Inc. (hereinafter referred to as "NCCI"), "Appeals Boards Objectives and Rules" effective June 22, 1992. Aggrieved persons under Tenn. Code Ann. § 56-5-309(b) shall instead use the process to appeal the application of a rating system by an insurer or rate service organization as set forth in this Bulletin.

It should also be noted that the process outlined by this Bulletin shall apply to all property and casualty insurers in this state and shall not be limited strictly to disputes involving workers' compensation insurance.

Tenn. Code Ann. § 56-5-309(b) states as follows:

> Every insurer and rate service organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which such rating system has been applied in connection with the insurance afforded. If the insurer fails to grant or reject such request within thirty (30) days, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of such insurer on such request may, within thirty (30) days after written notice of such action, appeal to the commissioner who, after a hearing held upon not less than ten (10) days written notice to the appellant and to such insurer, may affirm, modify, or reverse such action.

Procedure for appealing to an insurer or rate service organization for review

The Department interprets this statute as requiring that every insurer and rate service organization provide a process to an aggrieved person to appeal the application of the insurer's or rate service organization's rating system to that person's insurance coverage. Thus, each insurer and rate service organization must immediately develop their own process, if not already in place, to allow such appeals and such process should be communicated to their policyholders.

The above cited section also specifies that each insurer and rate service organization has thirty (30) days in which to grant or reject the written request for review. If the decision to grant or reject the written request for review is not acted upon within thirty (30) days, an aggrieved party may treat the refusal to grant or reject the written request for review as a rejection and proceed with a direct appeal to the Commissioner.

NCCI Internal Review Panel

One of the most common lines of insurance for these disputes is in workers' compensation insurance. Effective March 1, 2005, the Commissioner's designated rate service organization for workers' compensation insurance, NCCI, will accept disputes concerning classifications, manual rules, and rating plans for review by an Internal Review Panel established by NCCI. Disputes concerning these areas will be decided by the NCCI in lieu of consideration by the insurer. Such requests for review should be sent to: National Council on Compensation Insurance, Inc., Regulatory Assurance Department – Internal Review Panel, 901 Peninsula Corporate Circle, Boca Raton, Florida 33487. A decision by the Internal Review Panel will become final if appeal is not made to the Commissioner within thirty (30) days.

Tennessee Workers' Compensation Insurance Plan review

Persons aggrieved by the action of an insurer participating in the Tennessee Workers' Compensation Insurance Plan (assigned risk plan) shall have the same right to appeal under Tenn. Code Ann. § 56-5-309(b). A person so aggrieved may request the Plan Administrator to review the decision or actions of the insurer.

Procedure for appealing to the Commissioner for review

After the insurer, rate service organization, or Plan Administrator has ruled on a request for review, Tenn. Code Ann. § 56-5-309(b) gives the aggrieved party the right to appeal the ruling to the Commissioner. The appeal must be made in writing within thirty (30) days after the decision is made by the insurer, rate service organization or Plan Administrator and must contain a short and plain statement as to what portion of the insurer's, rate service organization's or Plan Administrator's decision is being appealed and the grounds

for such appeal. The appellant should also file the written decision made by the insurer, rate service organization or Plan Administrator along with the appeal. Such appeal and other supporting documents should be sent to: Department of Commerce and Insurance, Davy Crockett Tower, Actuarial Services Section, 4th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243. All documents filed with the Commissioner must also be sent to all parties to the dispute at the same time the appeal is filed with the Commissioner. In sending the appeal, the appellant may use any method allowed by law for legal service of process.

The appellant should also file their appeal and supporting documents with the Administrative Procedures Division at the address of Department of State, 312 Eight Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243 at the time the appeal is made to the Commissioner. The Department will make available to the parties quarterly dates in which the Department will hear such appeals. It will be the appellant's responsibility to ensure their appeal is placed on the docket with the Administrative Procedures Division and that notice is sent to all parties to the dispute.

The Commissioner, or his/her designee, will conduct all appeal hearings in accordance with all applicable provisions of law, including the "contested case" provisions of the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*, the Uniform Rules of Procedures for Hearing Contested Cases Before State Administrative Agencies at Tenn. Comp. R. & Regs. ch. 1360-4-1 and the Tennessee Rules of Civil Procedure.

Unless otherwise determined by the Commissioner, the Commissioner or his/her designee shall hear all such appeals in the presence of an administrative judge, as authorized by Tenn. Code Ann. § 4-5-301.

Should you have any questions concerning this Bulletin, please contact the Insurance Division at 615-741-2176.