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BULLETIN

TO: All Workers' Compensation Insurance Companies and Insurance Producers
Licensed in Tennessee

FR: Leslie A. Newman, Commissioner *LAN*
Department of Commerce and Insurance

RE: 2008 Tennessee Public Acts, Chapter 1041

DT: November 10, 2009

The purpose of this Bulletin is to notify insurance companies and producers that sell workers' compensation insurance in this state of various changes that the Department has implemented with respect to the sale of such insurance, especially as it relates to the Tennessee Workers' Compensation Insurance Plan ("Assigned Risk Plan").

2008 Tenn. Pub. Acts ch. 1041 becomes effective on December 31, 2009. This law requires all individuals, engaged in the construction industry, including sole proprietors and partners, to procure workers' compensation insurance coverage on themselves, as well as their employees. There are a few exceptions to this new mandatory coverage requirement as outlined in the amendment.

Being responsible for the implementation of this new law, especially as it relates to the sale of insurance through the Department's Assigned Risk Plan, the Department has taken certain measures to allow this law to be implemented in an efficient manner.

Establishment of Maximum/Minimum Payroll for Sole Proprietors

On December 9, 2008, the Department approved a filing made by the National Council on Compensation Insurance ("NCCI") which established "minimum and maximum" payroll levels for sole proprietors and partners in the construction industry in

an effort to provide cost-effective parameters for calculating premium costs for those individuals that have not previously been required to have workers' compensation coverage. These minimum and maximum payroll levels replaced the "flat" amount method of calculating the payroll of a sole proprietor or partner. Beginning effective 3/1/09, the minimum payroll sole proprietors and partners can be charged for is \$15,600 and the maximum payroll from which a rate can be determined is \$51,200.

New Classification Code 5604

On October 9, 2009, the Department approved a filing from NCCI which created a new classification code to be applied in this state. Classification Code 5604 recognizes that certain supervisors perform duties that place them in a much lower risk category in terms of job-related injuries than those who engage in actual construction activities. Classification Code 5604 includes executives, supervisors, and foremen who provide oversight, yet do not perform actual construction work. It is estimated that the cost to obtain workers' compensation coverage under this new classification code will be approximately twenty two percent (22%) of what would be charged if these individuals were placed under the normal residential construction classifications which they would have been placed prior to this new classification code.

Monthly Payment Plan for Policies in the Assigned Risk Plan

On October 15, 2009, the Plan Administrator, at the Department's request, directed all assigned risk carriers to amend payment methodology for all employers affected by Public Chapter 1041. For a person purchasing a policy effective December 31, 2009 or thereafter, the policyholder will be able to pay in twelve equal installments. For those so-called "minimum premium policy" or other construction related policies currently in effect, the additional premium owed under the full coverage policy will be divided evenly and paid in "monthly" installments for the policy's existing term and for one additional term. Thus, instead of requiring the affected individual to pay the full amount of the policy upon the effective date of the policy or election, the individual will be allowed to remit monthly installments on the balance due from adding this additional coverage.

Reduction of Loss Cost Multiplier for the Assigned Risk Plan

On October 15, 2009, the Commissioner entered an order setting the Assigned Risk Plan's loss cost multiplier for 2010 at 1.51. This amount results in an overall two percent (2%) reduction in premium on new and renewal policies effective on December 31, 2009, through February 28, 2010. Construction industry loss costs, which on average are falling 4.7% effective March 1, 2010, when combined with the 1.51 loss cost multiplier, will result in an overall average 6.6% reduction in premium.

Silent Partners of Limited Liability Companies

On April 8, 2009, the Department approved a filing which has the effect of designating those individuals who are "silent partners" in a partnership or limited liability company so that they will not be charged a workers compensation premium. "Silent partners" are defined as those who are not active in the business except to attend directors meetings.

In addition to the above, this Bulletin is also intended to correct the Department's position concerning the so-called minimum premium policy sold through the Assigned Risk Plan. It had previously been the Department's position that the minimum premium policy covered the sole proprietor owner/operator contractor on December 31, 2009. After further review of the issue, please be advised that it is the Department's position that without further election by the employer/policyholder, the minimum premium policyholder does not cover the sole proprietor, partner, or limited liability company owner contractor. The minimum premium policy was not ever intended to cover the sole proprietor owner/operator contractor. In other words, a minimum premium policy purchased prior to December 31, 2009 will not cover any additional persons after December 31 without the election by the policyholder to provide additional coverage. The Department will, through the Assigned Risk Plan, provide coverage to any contractor who elects to purchase workers' compensation coverage which they may be required to have under 2008 Tenn. Pub. Acts ch. 1041. Without having proof of such an election by the policyholder, an insurance company may not charge on audit or otherwise for coverage of a sole proprietor or partner under a minimum premium policy sold under the Assigned Risk Plan prior to December 31, 2009.

Should you have any questions concerning the issues or positions set forth in this Bulletin, or its application, please feel free to contact the Workers' Compensation area of the Policyholder Services Section of Tennessee Insurance Division at 615-741-0472.

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