



JUNE 11, 2018

LA-2018-01

## ITEM FILING ANNOUNCEMENT

### Louisiana—Announcement of Item 01-LA-2018—Revisions to Louisiana Amendatory Endorsement (WC 17 06 01 I)

#### ACTION NEEDED

Please review the changes outlined in the attachment to this circular for impact on your company's systems and procedures. Also review the weekly *Status of Item Filings* circular for state approval of this item.

**Caution:** At the time of distribution of this circular, this filing has been filed with the regulator but is **not yet approved**. This information is provided for your convenience and analysis. Please do not use this information until the regulator has approved the filing.

#### BACKGROUND

NCCI has submitted Item 01-LA-2018—Revisions to Louisiana Amendatory Endorsement (WC 17 06 01 I) to the Louisiana Department of Insurance. This item is applicable to new and renewal policies, and is proposed to become effective on and after August 1, 2018.

This item proposes to revise the Louisiana Amendatory Endorsement to address:

- Changes enacted in House Bill 370 that amended Louisiana Revised Statutes 22:2461–2469 to allow for electronic delivery of insurance documents and notices in accordance with the Louisiana Uniform Electronic Transaction Act, R.S. 9:2601 et seq. The requirements include having affirmative consent of the policyholder.
- The policy requirements for Home and Community-Based Services providers included in Chapter 50 of the Louisiana Administrative Code, Title 48, Part I, §5007, §5014, and §5015, which include that notices of cancellation be provided to the policyholder and, as the certificate holder, LDH Health Standards Section. The notices must be provided to both parties 30 days before any cancellation (including a nonpayment of premium cancellation) or change of coverage.

Refer to the attachment for details on this item.

#### IMPACT

No statewide premium impact will result from the changes proposed in this item.

#### NCCI ACTION

NCCI will take the following actions for Item 01-LA-2018:

- Issue a circular notifying you when the item is approved as filed, approved with changes, disapproved, or withdrawn
- Update the weekly *Status of Item Filings* circular on [ncci.com](http://ncci.com) with the latest status
- Add the downloadable version of any impacted endorsements to the weekly *Status of Item Filings* circular upon approval
- Publish updated pages for NCCI's *Forms Manual* prior to the effective date, if approved

If you would like to subscribe to any of our manuals, please call our Customer Service Center at 800-NCCI-123 (800-622-4123).

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FILING MEMORANDUM

ITEM 01-LA-2018—REVISIONS TO LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)

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**PURPOSE**

This item revises the Louisiana Amendatory Endorsement (WC 17 06 01 I) in NCCI's *Forms Manual of Workers Compensation and Employers Liability Insurance (Forms Manual)*.

**BACKGROUND**

The resulting changes from Louisiana House Bill 370 and the workers compensation policy requirements for Home and Community-Based Services (HCBS) providers are:

- For Louisiana HB 370, effective August 1, 2018, the bill revises Title 22 of the Louisiana Revised Statutes of 1950, to enact Chapter 19, R.S. 22:2461–2469, for Electronic Delivery of Insurance Documents and Notices. The revisions include that notices in insurance transactions may be delivered, stored, and presented by electronic means in accordance with the requirements of the Louisiana Uniform Electronic Transaction Act, R.S. 9:2601 et seq. The requirements include having affirmative consent of the policyholder.
- For HCBS providers, as addressed in Chapter 50 of the Louisiana Administrative Code (LAC), Title 48, Part I, §5007, §5014, and §5015, the policy requirements include that notices of cancellation be provided to the policyholder and, as the certificate holder, LDH Health Standards Section. The notices must be provided to both parties 30 days before any cancellation (including a nonpayment of premium cancellation) or change of coverage.

The Louisiana Amendatory Endorsement must be revised to comply with the changes resulting from Louisiana HB 370 and the LAC requirements for HCBS providers.

**PROPOSAL**

This item proposes to revise the Louisiana Amendatory Endorsement, Part Six—Conditions, to include:

1. The revisions needed for electronic delivery of notices in Section D
2. The establishment of a new section, Section G, for cancellation provisions specific to HCBS providers
3. Minor grammar and formatting changes for consistency

**IMPACT**

No statewide premium impact will result from the changes proposed in this item.

**EXHIBIT COMMENTS AND IMPLEMENTATION SUMMARY**

Exhibit	Exhibit Comments	Implementation Summary
1	Details the revisions to the Louisiana Amendatory Endorsement (WC 17 06 01 I) in NCCI's <i>Forms Manual</i> .	To become effective for new and renewal policies effective on and after 12:01 a.m. on August 1, 2018.

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**EXHIBIT 1**  
**FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE**  
**LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)**

**LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)**

This endorsement applies because Louisiana is shown in Item 3.A. of the Information Page.

Part Two—Employers Liability Insurance, Section I. (Actions Against Us) of the policy is replaced by the following:

**I. Actions Against Us**

You may not bring an action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

Part Five—Premium, Section E. (Final Premium) of the policy is replaced by the following:

**E. Final Premium**

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is cancelled, final premium will be determined in the following way, unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time that this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be calculated using one of the following methods as listed in the Schedule of this endorsement:
  - a. Pro rata based on the time that this policy was in force. Final premium will not be less than the pro rata share of the minimum premium, or
  - b. More than pro rata; it will be based on the time that this policy was in force, and increased by our short-rate cancellation procedure that has been filed with and approved by the commissioner. Final premium will not be less than the minimum premium.

Part Five—Premium, Section G. (Audit) of the policy is revised by adding the following:

**G. Audit**

If you do not allow us to examine and audit all of your records that relate to this policy, and/or do not provide audit information as requested, we may apply an Audit Noncompliance Charge equal to a maximum of up to two times the estimated annual premium. The method for determining the Audit Noncompliance Charge, and the maximum dollar amount, is shown in the Schedule of this endorsement.

If you allow us to examine and audit all of your records after we have applied an Audit Noncompliance Charge, we will revise your premium in accordance with our manuals and Part Five—Premium, Section E. (Final Premium) of this policy.

**ITEM 01-LA-2018—REVISIONS TO LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)****EXHIBIT 1 (CONT'D)**  
**FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE**  
**LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)**

Failure to cooperate with this policy provision may result in the cancellation of your insurance coverage, as specified under the policy.

Part Six—Conditions, Section D. (Cancellation) of the policy is replaced by the following:

**D. Cancellation**

[For Home and Community-Based Services (HCBS) providers, refer to Section G. in lieu of Section D. for cancellation provisions.]\*

1. If coverage has not been in effect for ~~sixty~~60 days and the policy is not a renewal, cancellation will be effected by mailing or delivering a written or electronic (in accordance with the Louisiana Uniform Electronic Transactions Act) notice to you at the mailing address shown on the policy or your last address of record at least ~~sixty~~60 days before the cancellation effective date, except in cases where cancellation is based on nonpayment of premium. Notice of cancellation based on nonpayment of premium will be mailed or delivered at least ~~ten~~10 days before the effective date of cancellation. After coverage has been in effect for more than ~~sixty~~60 days or after the effective date of a renewal policy, we will not cancel the policy unless the cancellation is based on at least one of the following reasons:
  - a. Nonpayment of premium
  - b. Fraud or material misrepresentation made by you or with your knowledge in obtaining the policy, continuing the policy, or in presenting a claim under the policy
  - c. Activities or omissions on your part ~~which~~that change or increase any hazard insured against, including a failure to comply with loss control recommendations
  - d. Change in the risk ~~which~~that increases the risk of loss after insurance coverage has been issued or renewed, including an increase in exposure due to regulation, legislation, or court decision
  - e. Determination by the commissioner of insurance that ~~the continuation of~~ continuing the policy would jeopardize your solvency or would place us in violation of the insurance laws of this state or any other state
  - f. Violation or breach by the insured of any policy terms or conditions
  - g. Such other reasons that are approved by the commissioner of insurance
2. The insurer is required to provide notification of cancellation as follows:
  - a. A notice of cancellation of insurance coverage by us will be in writing or by electronic means and will be mailed or delivered to you at the mailing address ~~as~~ shown on the policy or your last address of record. Notices of cancellation based on conditions 1.b. through 1.g. of Section D-1above will be mailed or delivered at least ~~thirty~~30 days before the effective date of the cancellation; notices of cancellations based on condition 1.a. of Section D-1above will be mailed or delivered at least ~~ten~~10 days before the effective date of cancellation. The notice will state the effective date of the cancellation.
  - b. We will provide you with a written or electronic statement specifying the reason for the cancellation when you request such a statement in writing. Your written or electronic request must state that you hold us harmless from liability for any communication:
    - (1) Giving notice of or specifying the reasons for a cancellation, or
    - (2) For any statement made in connection with an attempt to discover or verify the existence of conditions ~~which~~that would be a reason for cancellation under this endorsement

**ITEM 01-LA-2018—REVISIONS TO LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)**

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**EXHIBIT 1 (CONT'D)  
FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE  
LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)**

3. We will provide a notice of cancellation or a statement of reasons for cancellation where cancellation for nonpayment of premium is effected by a premium finance company or other entity pursuant to a power of attorney or other agreement executed by or on behalf of you.
4. We may decide not to renew your policy. If we decide not to renew your policy, we will mail or deliver ~~or mail~~ written or electronic notice to you at the mailing address shown on the policy or your last address of record. Such notice of nonrenewal will be mailed or delivered at least ~~sixty~~60 days before the policy expiration date. Such notice to you will include your loss-run information for the period the policy has been in force within, but not to exceed, the last three years of coverage. If the notice is mailed or delivered less than ~~sixty~~60 days before expiration, coverage will remain in effect under the same terms and conditions until ~~sixty~~60 days after notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the policy expiration date will be considered pro rata based upon the previous year's rate. For purposes of this endorsement, the transfer of a policyholder between companies within the same insurance group will not be a refusal to renew. In addition, changes in the deductible, changes in rate, changes in the amount of insurance, or reductions in policy limits or coverage will not be refusals to renew.
5. Notice of nonrenewal will not be required if we or a company within the same insurance group has offered to issue a renewal policy, or where you have obtained replacement coverage or have agreed in writing to obtain replacement coverage.
6. If we provide the notice described in paragraph 4 above and thereafter we extend the policy for ~~ninety~~90 days or less, an additional notice of nonrenewal is not required with respect to the extension.
7. We must mail or deliver to you at the mailing address shown on the policy or your last address of record, written or electronic notice of any rate increase, change in deductible, or reduction in limits or coverage at least ~~thirty~~30 days before the expiration date of the policy. If we fail to provide such ~~thirty~~30-day notice, the coverage provided to you at the expiring policy's rate, terms, and conditions will remain in effect until notice is given or until the effective date of replacement coverage obtained by you, whichever occurs first ~~occurs~~. For the purposes of this paragraph, notice is considered given ~~thirty~~30 days following the date of mailing or delivery of the notice. If you elect not to renew, any earned premium for the period of extension of the terminated policy will be calculated pro rata at the lower of the current or previous year's rate. If you accept the renewal, the premium increase, if any, and other changes will be effective the day following the prior policy's expiration date.
8. Paragraph 7 does not apply to changes:
  - a. In a rate or plan filed with the commissioner of insurance and applicable to an entire class of business
  - b. Based on the altered nature or extent of the risk insured
  - c. In policy forms filed and approved with the commissioner and applicable to an entire class of business
  - d. Requested by the insured
9. Proof of mailing or delivery of notice of cancellation, or of nonrenewal, or of premium or coverage changes, to the named insured at the mailing address shown in the policy or the last address of record, will be sufficient proof of notice.

Part Six—Conditions of the policy is revised by adding the following provision:

**F. Your Right to Remove Agent**

EXHIBIT 1 (CONT'D)
FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE
LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)

We will not change or remove the agent of record who wrote this policy prior to before the termination or renewal of this policy unless you request the change or removal. If you request the change or removal of the agent, we will notify the agent in writing 10 calendar days in advance of before the change or removal.

Schedule

1. If you cancel, final premium for this policy will be calculated: pro rata, more than pro
or rata

2. Basis of Audit
Noncompliance Charge

Maximum Audit
Noncompliance Charge
Multiplier

Maximum Audit
Noncompliance Charge
\$ Amount

[Part Six—Conditions, Section D. (Cancellation) of the policy is replaced for Home and Community-Based Services (HCBS) providers by adding Part Six—Conditions, Section G. The following cancellation provisions are to be used when the policy provides coverage to an HCBS provider and are intended to comply with Chapter 50 of the Louisiana Administrative Code, Title 48, Part I, Sections 5007, 5014, and 5015:

G. Cancellation—Home and Community-Based Services (HCBS) Providers

- 1. If coverage has not been in effect for 60 days and the policy is not a renewal, cancellation will be effected by mailing or delivering a written or electronic (in accordance with the Louisiana Uniform Electronic Transactions Act) notice to you and the certificate holder (LDH Health Standards Section) at the mailing address shown on the policy or your last address of record 60 days before any cancellation or change of coverage, except in cases where cancellation is based on nonpayment of premium. Notice of cancellation based on nonpayment of premium will be mailed or delivered 30 days before the effective date of cancellation. After coverage has been in effect for more than 60 days or after the effective date of a renewal policy, we will not cancel the policy unless the cancellation is based on at least one of the following reasons:
a. Nonpayment of premium
b. Fraud or material misrepresentation made by you or with your knowledge in obtaining the policy, continuing the policy, or in presenting a claim under the policy
c. Activities or omissions on your part that change or increase any hazard insured against, including a failure to comply with loss control recommendations

**EXHIBIT 1 (CONT'D)**  
**FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE**  
**LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)**

- d. Change in the risk that increases the risk of loss after insurance coverage has been issued or renewed, including an increase in exposure due to regulation, legislation, or court decision
- e. Determination by the commissioner of insurance that continuing the policy would jeopardize your solvency or would place us in violation of the insurance laws of this state or any other state
- f. Violation or breach by the insured of any policy terms or conditions
- g. Such other reasons that are approved by the commissioner of insurance
2. The insurer is required to provide notification of cancellation as follows:
  - a. A notice of cancellation of insurance coverage by us will be in writing or by electronic means and will be mailed or delivered to you and the certificate holder (LDH Health Standards Section) at the mailing address shown on the policy or your last address of record. Notices of cancellation based on conditions 1.a. through 1.g. of Section G-1 will be mailed or delivered 30 days before the effective date of the cancellation. The notice will state the effective date of the cancellation.
  - b. We will provide you and the certificate holder (LDH Health Standards Section) with a written or electronic statement specifying the reason for the cancellation when you request such a statement in writing. Your written or electronic request must state that you hold us harmless from liability for any communication:
    - (1) Giving notice of or specifying the reasons for a cancellation, or
    - (2) For any statement made in connection with an attempt to discover or verify the existence of conditions that would be a reason for cancellation under this endorsement
3. We will provide a notice of cancellation or a statement of reasons for cancellation to you and the certificate holder (LDH Health Standards Section) where cancellation for nonpayment of premium is effected by a premium finance company or other entity pursuant to a power of attorney or other agreement executed by or on behalf of you.
4. We may decide not to renew your policy. If we decide not to renew your policy, we will mail or deliver written or electronic notice to you at the mailing address shown on the policy or your last address of record. Such notice of nonrenewal will be mailed or delivered at least 60 days before the policy expiration date. Such notice to you will include your loss-run information for the period the policy has been in force within, but not to exceed, the last three years of coverage. If the notice is mailed or delivered less than 60 days before expiration, coverage will remain in effect under the same terms and conditions until 60 days after the notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the policy expiration date will be considered pro rata based on the previous year's rate. For purposes of this endorsement, the transfer of a policyholder between companies within the same insurance group will not be a refusal to renew. In addition, changes in the deductible, changes in rate, changes in the amount of insurance, or reductions in policy limits or coverage will not be refusals to renew.
5. Notice of nonrenewal will not be required if we or a company within the same insurance group has offered to issue a renewal policy, or where you have obtained replacement coverage or have agreed in writing to obtain replacement coverage.
6. If we provide the notice described in paragraph 4 above, and thereafter we extend the policy for 90 days or less, an additional notice of nonrenewal is not required with respect to the extension.
7. We must mail or deliver to you and the certificate holder (LDH Health Standards Section) at the mailing address shown on the policy or the last address of record, written or electronic notice of any rate increase, change in deductible, or reduction in limits or coverage 30 days before the expiration date of the policy. If we fail to provide such 30-day notice, the coverage provided to you at the expiring policy's rate, terms, and conditions will remain in effect until notice is given or until the



**EXHIBIT 1 (CONT'D)**  
**FORMS MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE**  
**LOUISIANA AMENDATORY ENDORSEMENT (WC 17 06 01 I)**

effective date of replacement coverage obtained by you, whichever occurs first. For the purposes of this paragraph, notice is considered given 30 days following the date of mailing or delivery of the notice. If you elect not to renew, any earned premium for the period of extension of the terminated policy will be calculated pro rata at the lower of the current or previous year's rate. If you accept the renewal, the premium increase, if any, and other changes will be effective the day following the prior policy's expiration date.

8. Paragraph 7 does not apply to changes:
  - a. In a rate or plan filed with the commissioner of insurance and applicable to an entire class of business
  - b. Based on the altered nature or extent of the risk insured
  - c. In policy forms filed and approved with the commissioner and applicable to an entire class of business
  - d. Requested by the insured
  
9. Proof of mailing or delivery of notice of cancellation, or of nonrenewal, or of premium or coverage changes to the named insured and the certificate holder (LDH Health Standards Section) where applicable at the mailing address shown in the policy or at the last address of record, will be sufficient proof of notice.]\*

\* Use of bracketed [ ] provisions above indicates language only applicable to specified policies, and such bracketed language only needs to appear for the applicable policies.