

November 22, 2016

**ALL ASSOCIATION MEMBERS**

Circular Letter No. 16-1700

**RE: Frequently Asked Questions Regarding NCCI Item B-1429 - Establishment of Audit Noncompliance Charge - Minnesota**

The Minnesota Department of Commerce approved this filing to become effective January 1, 2017 at 12:01 a.m. for all new and renewal business. Please reference [MWCIA Circular 16-1688](#).

**Background:**

The purpose of Item B-1429 is to establish a more uniform approach to aid carriers who cannot obtain necessary policyholder records to perform a premium audit. This item introduces a new national rule, form, and designated statistical code that apply on a mandatory basis to both Assigned Risk Plan and Voluntary Workers' Compensation policies.

The following Minnesota Manuals will be updated on January 1, 2017 as a result of the approval of NCCI's Item B-1429:

- ***Minnesota Basic Manual***
- ***Minnesota Statistical Plan Manual***
- ***Minnesota Forms Manual***

A summary of the newly established Audit Noncompliance Charge (ANC) rules are as follows:

- The carrier must attach the newly established ANC endorsement (WC 00 04 24) to every policy subject to audit for new and renewal policies effective January 1, 2017 and thereafter.
- The carrier must make two attempts to obtain audit information to complete the audit, and properly document those attempts.
- The ANC rule applies to all types of audits including mail/email, phone, and physical audits.
- Carriers may apply a charge of up to two times the annual estimated premium.

## FAQs- MN Specific Item Filing B-1429

- Carriers must report the Audit Noncompliance Charge (ANC) on the Unit Statistical Report (USR) in manner consistent with the newly adopted rule in the **Minnesota Statistical Plan Manual**:  
Report the ANC using Statistical Code 9757 so that the resulting charge is recorded but excluded from data used in the ratemaking and experience rating processes. Code 9757 shall not be reported on any policy transactions, this code is for Unit Statistical Reporting only.
- For an employer that has paid the ANC, but later allows an audit to be performed or provides the required records to a carrier, the ANC must be refunded to the employer, or applied to any outstanding balance on the policy.
- Assigned Risk carriers may refuse coverage to employers that have refused to provide the necessary audit information. They may do this even in the event that the employer has paid the ANC.

See below for some Minnesota-specific Frequently Asked Questions regarding Item B-1429.

### –Frequently Asked Questions–

#### Agents & Carriers

- Q1: I have a client who did not complete the audit on their 2016 policy. Can the carrier charge the ANC on that policy, since they are performing the audit in 2017?**
- A1:** No. B-1429 applies to new and renewal policies issued on or after January 1, 2017. The endorsement, WC 00 04 24 must be attached to the policy at inception in order for the carrier to apply the ANC rule.
- Q2: How many attempts do carriers have to make before they can apply the ANC?**
- A2:** Carriers must make **at least two** attempts to obtain the audit information prior to applying the ANC.
- Q3: If it is a telephone or mail audit, is the carrier still able to apply the ANC penalty?**
- A3:** Yes, the ANC is applicable to **all** types of audits. Provided the carrier has made two attempts to obtain the audit information, they may apply the ANC in the event that they are unsuccessful.
- Q4: Who determines whether an employer is noncompliant for audit purposes?**
- A4:** The carrier must determine whether the employer is noncompliant with the policy terms and conditions in accordance with the filed and approved **Minnesota Basic Manual** Rule 3-A-13-b, subject to state law. Employers are noncompliant if they do not adhere to the provisions of the policy.  
Specifically, *Part Five- Premium, F. - Records* states that the employer will keep records of information needed to compute premium. The employer will provide the carrier with copies of those records when asked for them. *Part Five- Premium, G. - Audit* states that

the employer will let the carrier examine and audit all of the employer’s records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We (the carrier) may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

**Q5: Can the amount charged by a carrier vary?**

**A5:** Yes. The rule allows carriers to charge up to two times the annual estimated premium. The maximum charge allowed in Minnesota is two times the annual estimated premium.

**Q6: If an employer is insured with a voluntary market carrier and does not allow the audit and is assessed the ANC, are they put on a list that would affect their ability to obtain workers’ compensation with an alternate carrier in the voluntary market?**

**A6:** No. Employers insured in the voluntary market are not placed on a list in this scenario. Only employers insured through the Minnesota Assigned Risk Plan who are not in compliance with the ANC rule may be denied coverage through the Minnesota Assigned Risk Plan. See “Minnesota Assigned Risk Plan Considerations” below.

**Q7: How is the ANC amount determined?**

**A7:** The basis of the charge is estimated annual premium. For example, consider a policy that was estimated to develop \$15,000 in premium and the maximum ANC is two times the policy’s estimated annual premium. Assume the carrier attached the applicable ANC endorsement at policy inception and made two unsuccessful audit attempts in accordance with the ANC rule. The carrier would then apply a charge of up to \$30,000 and bill the employer for a total annual premium of up to \$45,000.

Estimated Premium	ANC Charge	Final Premium (with ANC)
\$15,000	2x Estimated Premium	
	2(\$15,000)= \$30,000	
<b>\$15,000</b>	<b>+\$30,000</b>	<b>=\$45,000</b>

The goal of the ANC rule is to encourage the employer to provide the carrier access to the records necessary to conduct the audit. Once the employer complies and allows the carrier access, the \$30,000 charged for the ANC would be removed and the final premium billed would be based on the actual audited payroll.

**Q8: Can I use a carrier filed endorsement to notify my policyholders of the new ANC rule and premium charge?**

**A8:** No. All carriers must attach the endorsement WC 00 04 24 to all new and renewal policies effective on or after January 1, 2017. This endorsement details the application of the ANC rule.

**Q9: When should the carrier report Statistical Code 9757?**

**A9:** A carrier should report Stat Code 9757 on the Unit Statistical Report (USR) not on the Policy Submission, and only if the carrier applied the ANC penalty.

Following our previous example of an employer with an estimated premium of \$15,000 and an ANC, it would be reported as follows:

\$30,000 ANC reported on the USR using Statistical Code 9757.

**Q10: What happens if an employer pays the ANC and later allows the audit?**

**A10:** For an employer that has paid the ANC, but later allows an audit to be performed or provides the required records for the applicable policy period to the applicable carrier, the ANC must be refunded to the employer and/ or applied to any outstanding balance for the policy. Refer to *Minnesota Basic Manual* Rule 3-A-13-b (7) for more information.

**Q11: How does the carrier correct a Unit Report if the employer allowed the audit after the ANC was reported under Statistical Code 9757?**

**A11:** If the employer subsequently allows the final audit, the ANC must be removed from the Unit Stat Report. A correction report would be required to update the exposure and premium. See example below which illustrates a partial ANC assessed to the policyholder.

On the first report, the carrier is reporting data for an insured who did not allow an audit and was charged the ANC premium. The carrier reports the USR as follows:

- Estimated Audit Code: **N**
- Class Code 6834
  - Exposure Amount: \$50,000 (Estimated)
  - Rate: 7.69
  - Premium Amount: \$3,845 (Estimated)
- Statistical Code **9757** (Audit Noncompliance Charge)
  - Premium Amount: \$1,000

Subsequent to the 1<sup>st</sup> unit report, but before the 2<sup>nd</sup> unit report valuation, the employer allows the final audit to be conducted, which results in audited exposure of \$65,060. This requires an Exposure Correction to be reported to adjust the Exposure Amount and Premium Amount and to remove Statistical Code 9757. The correction report includes the following Revised Exposure Record information:

- Class Code 6834
  - Exposure Amount: \$65,060 (Audited)
  - Manual Rate: 7.69
  - Premium Amount: \$5,003 (Final)

Also, in accordance with the reporting rules, the Estimated Audit Code remains as a “**N**.”

**Q12: Is the ANC subject to Experience Rating?**

**A12:** No. The ANC is not subject to Experience Rating, and the premium charged would not be used to qualify an employer to become experience rated.

**Q13: Is the ANC subject to Minnesota premium tax?**

**A13:** Yes. The ANC is a premium charge, and therefore is indeed subject to Minnesota premium tax.

**–Minnesota Assigned Risk Plan Considerations–**

**Q14: Are there any special policy reporting provisions for Assigned Risk carriers?**

**A14:** Yes. Assigned Risk carriers must use Transaction 17-Compliance/Noncompliance. Voluntary market carriers should not use this transaction code, as it will generate an error.

**Q15: My client has been refused coverage by the Minnesota Assigned Risk Plan for a policy effective in 2017 because they were noncompliant on a 2015 audit. Why were they refused coverage when the rule applies only to policies issued on or after January 1, 2017?**

**A15:** The Minnesota Assigned Risk Plan has always had a noncompliance rule in place. Please reference the [MWCARP Agent Guide](#). The difference is that now the servicing carrier will be allowed to assess the ANC to the policyholder for noncompliance of audit on policies issued on or after January 1, 2017.

**Q16: Assume that the ANC has been applied to an employer's assigned risk policy issued through the Minnesota Assigned Risk Plan and the employer pays the ANC but does not allow the audit to be completed. Is the employer deemed to be compliant and eligible for coverage through the Minnesota Assigned Risk Plan because they paid the ANC or they subsequently scheduled an appointment to complete a final audit of their policy?**

**A16:** In the example above, the employer (Assigned Risk policyholder) is still ineligible for coverage through the Minnesota Assigned Risk Plan. The employer must allow the carrier to complete the final audit and reconcile any past amounts due in order to be deemed compliant and eligible for coverage through the Minnesota Assigned Risk Plan. If the employer had paid the ANC and then completed the final audit which resulted in a lesser amount due, the employer may be eligible for a refund of premium.