

## Rule 4

### Assigned Risk Plan Rules

*Applicable to North Carolina **Assigned Risk** policies only*

#### A. North Carolina Workers Compensation Insurance Plan

Pursuant to North Carolina General Statute 58-36-1, there is hereby established a North Carolina Workers Compensation Insurance Plan ("Plan" or "WCIP"), which provides for the equitable apportionment of employers who are in good faith entitled to workers compensation insurance as defined herein, but who are unable to procure such insurance in a regular manner. This Plan, and any future modification, is subject to the approval of the North Carolina Commissioner of Insurance (Commissioner).

#### 1. WCIP DEFINITIONS

##### a. Affiliated Insurer

An insurer that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another insurer specified. The term "control" means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an insurer, whether through the ownership of voting securities, by contract or otherwise. Control shall be deemed to exist if any person or business enterprise, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies, representing ten (10) percent or more of the voting securities of any other insurer.

##### b. Agent

A fire and casualty agent properly licensed in the State of North Carolina whose privileges under the Plan have not been suspended or revoked; provided, however, that such agent shall, for purposes of this Plan, be considered to be acting on behalf of the insured or employer applying under this Plan and not as an agent of the Plan Administrator or of any assigned carrier for Plan business.

##### c. Application

The application currently used in the residual market is the form currently approved for use in applying for workers compensation insurance written under the Plan.

##### d. Application Submission Methods

The methods approved by the Plan Administrator, in which eligible producers may submit completed applications which methods are as follows:

- Online – Through [www.ncrb.org](http://www.ncrb.org) and the **ManageAR** system
- Mail – The U.S. Postal Service or private overnight delivery service
- Hand Delivery – To the North Carolina Rate Bureau at its offices on weekdays, excluding holidays, Monday through Thursday, between the hours of 8:00am and 5:00pm, and on Fridays, between the hours of 8:00am and 12:00pm local time.

**e. Assigned Carrier**

The insurer that has been assigned to provide coverage to an employer who has applied for workers compensation insurance pursuant to the Plan. An assigned carrier can either be defined as a servicing or a direct assignment carrier.

**f. Association Bylaws or Bylaws**

The Bylaws of the National Workers Compensation Reinsurance Association NFP (NWCRA), whose member insurers participate in the Reinsurance Agreement(s) authorized under this Plan to provide reinsurance to the servicing carriers on employers assigned to them under this Plan. The Bylaws are the agreement subscribed to by insurers selecting Option 2 – Subscription to Association Bylaws as their means of satisfying their participation in the Plan. The Bylaws are attached hereto and by this reference are incorporated into and made a part of this Plan to the extent that the Association Bylaws are not inconsistent with this Plan and applicable to North Carolina law.

**g. Board of Directors**

The Board of Directors for the National Workers Compensation Reinsurance Association NFP.

**h. Direct Assignment Carrier**

An insurer, other than a servicing carrier, that has elected and been authorized by the Plan Administrator to receive direct assignments under Option 1 of the Participation section of this Plan.

**i. Employer**

Any business organization or enterprise that is required by statute or elects to maintain workers compensation insurance in this State. The term shall include any business organizations or enterprises that are affiliated as a result of common management or ownership.

**j. Net Premiums Written**

The gross direct premiums charged less all premiums (except dividends and savings refunded under participating policies) returned to insureds for all workers compensation and occupational disease insurance, exclusive of premiums for (1) employers subject to this Plan, (2) employers written under the National Defense Projects Rating Plan and (3) excess policies.

**k. North Carolina Rate Bureau or NCRB**

The statutory rating organization authorized in this State to make and file loss costs, residual market rates, rating values, policy and endorsement forms, classifications, and rating plans for workers compensation insurance.

**l. Plan Administrator**

The North Carolina Rate Bureau is the organization designated to administer the affairs of this Plan.

**m. Premium in Dispute**

A workers compensation insurance premium obligation over which a bona fide dispute exists and for which the employer or its representative has provided:

- 1) Written notice to the insurer or the assigned carrier detailing the specific areas of dispute;
- 2) An estimate of the premium the employer believes to be correct, with an explanation of the premium calculation;
- 3) Payment of the undisputed portion of the premium; and
- 4) A written report to the Plan Administrator which includes all documentation relevant to the dispute, describes the attempts to reconcile the differences and requests review and appropriate action to resolve the areas of dispute.

**n. Producer**

A licensed North Carolina agent, broker, producer or insurance representative as defined in the state insurance code, whose privileges under this Plan have not been suspended or revoked, designated by the employer or applicant applying under this Plan to secure and maintain workers compensation and employers liability insurance on behalf of the employer. For purposes of this Plan, the producer is considered to be acting on behalf of the insured or employer applying for coverage under this Plan and not as an agent of the Plan Administrator or any assigned carrier for Plan business.

**o. Reinsurance Agreement**

A contractual arrangement among Association members providing a quota share reinsurance facility for workers compensation insurance in a number of states and for which administrative services are provided by the National Council on Compensation Insurance, Inc., in its capacity as Administrator as designated under the Association Bylaws.

**p. Servicing Carrier**

An insurer, other than a direct assignment carrier, authorized to receive Plan assignments and provide coverage to eligible employers on behalf of those participating companies subscribing to the Association Bylaws incorporated as part of this Plan in this State.

**q. Undisputed Premium**

A workers compensation insurance premium obligation that is not the subject of a bona fide dispute.

**r. Workers Compensation Insurance**

- 1) Statutory workers compensation and occupational disease liability insurance, including insurance for liability under the Longshore and Harbor Workers' Compensation Act, as amended, and the Federal Mine Safety and Health Act, as amended;
- 2) Employers liability insurance written in connection with a workers compensation insurance policy; and
- 3) Such other coverages as determined by the Plan Administrator and approved by the Commissioner.

**2. RULES FOR ELIGIBILITY AND ASSIGNMENT**

North Carolina General Statute 58-36-1 (5) requires, in part, that as a prerequisite to the transaction of workers compensation insurance in North Carolina, each carrier shall file written authority with

the NCRB permitting the Bureau to assign to it employers which are in good faith entitled to workers compensation insurance as defined herein, but who are unable to procure such insurance in a regular manner. The following rules, which have been adopted by the North Carolina Rate Bureau and approved by the Commissioner of Insurance, shall cover the assignment and the insuring of such employers as provided by the law mentioned above. Any dispute arising hereunder shall be subject to the dispute resolution procedures provided in this Plan.

**a. Good Faith Entitlement**

This Plan shall apply only to employers that in good faith are entitled to workers compensation insurance under the North Carolina Workers' Compensation Law.

Good faith will be presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance, and the insurance may be refused or cancelled, if any of the following circumstances exist, at the time of the application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

- 1) At the time of application, a self-insured employer is aware of and fails to disclose pending bankruptcy proceedings, insolvency, or cessation of operations involving the employer.
- 2) At the time of application, a self-insured employer is aware, or with the exercise of reasonable diligence should be aware, of prior conditions, exposures, claims, or any other information which make it likely that a significant number of occupational disease or cumulative injury claims will arise from exposure incurred while the employer was self-insured and the employer fails to disclose such prior conditions, exposures, claims, or other information.
- 3) The employer while insurance is in force, knowingly refuses to meet reasonable health, safety, or loss control requirements; does not allow reasonable access to the insurer for audit or inspection; or does not comply with any other policy or Plan obligations and conditions.
- 4) The employer has an outstanding workers compensation insurance premium obligation or other monetary obligation, on either previous insurance or while a member of a licensed group of self-insurance associations, that is not subject to a bona fide premium dispute.
- 5) The employer, or its representative and/or the agent/producer knowingly fails to comply with Plan procedures; or knowingly makes a material misrepresentation on the application by omission or otherwise, including, but not limited to, the following: estimated payroll, nature of business, name or ownership of business, previous insurance history, or an outstanding premium obligation.

**b. Employer Certification**

An employer shall not be considered as subject to this Plan unless such employer has been certified to be difficult to place by a fire and casualty insurance agent licensed in North Carolina and such agent so certified in the prescribed application form.

**c. Application Requirements**

A standard application form for insurance under this Plan must be completed by or on behalf of the employer. The application shall require:

- 1) Complete underwriting information and reasonable payroll estimates.
- 2) A statement that the employer will maintain a complete record of its payroll transactions in such form as the assigned carrier may reasonably require and that such record will be available to the assigned carrier at a designated place during the policy period and for one (1) year after.
- 3) A statement that the employer will comply with all reasonable recommendations of the assigned carrier relating to the welfare, health, and safety of employees.
- 4) Payment to the North Carolina Rate Bureau of the appropriate deposit premium in the form of a valid electronic funds transfer (EFT), a check of the agent or producer, check of a premium finance company, or a certified check, cashier's check, or money order of the applicant employer or its representative.

**d. Plan Administrator**

The Plan shall be administered by the North Carolina Rate Bureau (hereinafter referred to as the Plan Administrator), or its designee.

**e. Assignment procedures**

Upon receipt of a properly completed application for insurance, the Plan Administrator shall (1) determine, to the extent possible based on the application, that the employer is in good faith entitled to insurance; (2) establish the appropriate classifications, rates, and estimated annual premium; and (3) upon payment of the estimated annual or deposit premium, bind coverage and designate an assigned carrier.

The Plan Administrator may request additional information, at its discretion, to establish eligibility, to assign appropriate classification codes, to calculate applicable premium, and to otherwise appropriately process the application. Such information may include tax documentation, ownership information, contracts, or any other information deemed necessary to process the application. The employer and/or its representative shall provide this information/documentation or provide an acceptable explanation for failure to do so.

To secure a requested effective date, the employer or its representative must submit to the Plan Administrator a fully completed and signed application, using an approved application submission method.

***Depending on the application submission method, the earliest effective date for coverage will be established in the following manner:***

**Application Submission Table 1**

<b>If the application (including the estimated annual or deposit premium) is submitted by regular mail and the envelope containing the application has . . .</b>	<b>Then the earliest effective date will be 12:01 a.m. on the day after . . .</b>
A legible U.S. postmark	Postmark
An illegible U.S. postmark	Receipt of the application by the Plan Administrator
A private postage meter mark only	Receipt of the application by the Plan Administrator
Internet postage with a legible cancellation stamp	The date on the cancellation stamp
Internet postage without a cancellation stamp or an illegible cancellation stamp	Receipt of the application by the Plan Administrator

**Application Submission Table 2**

<b>If the application (including the estimated annual or deposit premium) is submitted by overnight mail and . . .</b>	<b>Then the earliest effective date will be 12:01 a.m. on the day after . . .</b>
The package containing the application has proof of mailing that can be verified	The application was sent to the Plan Administrator
The package containing the application does not have proof of mailing or proof of mailing cannot be verified	Receipt of the application by the Plan Administrator
Proof of mailing (i.e., certified mail receipt) provided by the agent	Postmark
Proof of mailing cannot be obtained	Receipt of the application by the Plan Administrator

**Application Submission Table 3**

<b>If the application (including the estimated annual or deposit premium) is hand-delivered to the Plan Administrator . . .</b>	<b>Then the earliest effective date will be 12:01 a.m. on the day after receipt by the Plan Administrator</b>

**Application Submission Table 4**

<b>If the application (including any necessary supplemental applications) is submitted through the Rate Bureau’s ManageAR system and . . .</b>	<b>Then the earliest effective date will be 12:01 a.m. on the day after . . .</b>
The estimated annual or deposit premium is submitted electronically via a valid electronic funds transfer	Receipt of the completed online submission
The estimated annual or deposit premium is submitted via regular or overnight mail	Postmark

**IF AN APPLICATION EMPLOYS A COMBINATION OF ANY OF THE ABOVE DESCRIBED METHODS OF SUBMISSION, THE BUREAU SHALL APPLY THE ABOVE DESCRIBED RULES USED TO DETERMINE THE EARLIEST EFFECTIVE DATE BASED ON THE METHODS OF SUBMISSION EMPLOYED AND THE EARLIEST EFFECTIVE DATE OF COVERAGE SHALL BE THE LATEST EFFECTIVE DATE OF SUCH METHODS EMPLOYED BY THE APPLICANT.**

**f. Policy Term**

The assigned carrier shall issue a standard policy of insurance with an effective date as established by the Plan Administrator. The policy shall be effective for a period of one (1) year, unless another termination date is authorized by the Plan Administrator. A short-term policy may be obtained only once within a twelve-month (12) period, unless agreed to by the assigned carrier.

**g. Reassignment**

Any employer who is dissatisfied with its assigned carrier may request reassignment upon expiration. Reassignment will require the submission of a properly completed application.

**h. Additional States Coverage**

All assignments under this Plan are to be made on an intrastate basis. However, any employer desiring insurance in additional states may request its assigned carrier to furnish insurance in such additional states in accordance with the Interstate Assignment section of this Plan.

**i. Agent/Producer Information**

- 1) **Commission:** Five percent (5%) of the total premium charged and collected from the employer shall be the commission to be paid to the producer of record or licensed agent designated by the insured employer.
- 2) **Changes:** The employer shall designate a licensed agent or producer of record and, with respect to any renewal of the coverage, may change the agent or producer by notice to the assigned carrier prior to the date of such renewal or, with the consent of the assigned carrier, at any other time.

**j. Available Coverages**

Other coverages may be available to the employer through the assigned carrier.

**3. ASSIGNED CARRIER RESPONSIBILITIES**

The assigned carrier shall comply with all applicable state laws and regulations and all performance standards and procedures set forth in or promulgated under this Plan including, but not limited to, the following:

**a. Approved Classifications, Forms, Rates, and Rating Plans**

All policies must be written utilizing the classifications, forms, rates, and rating plans that have been adopted for use in the residual market by the Plan Administrator and approved by the Commissioner.

**b. Policy Information Page**

The Policy Information page and all endorsements must be properly identified as a WCIP or AR (Assigned Risk). Policies and endorsements submitted hard copy must show the WCIP or AR indicator directly above the policy number on the Policy Information page. Policies and endorsements submitted electronically must be reported in the format established by the Plan Administrator.

**c. Cancellation of the Policy**

If, after the issuance of a policy, the assigned carrier determines that an employer is not entitled to insurance, or has failed to comply with reasonable health, safety, or loss control requirements, or has violated any of the terms and conditions under which the insurance was issued, and after providing opportunity for cure, the assigned carrier shall initiate cancellation and inform the Plan Administrator of the reason for such cancellation.

Failure or refusal by an employer to make full disclosure to the assigned carrier or Plan Administrator of information regarding true ownership, change of ownership, operations, payroll, or any other records pertaining to workers compensation insurance or any other information required under this Plan or to comply with policy or Plan terms or conditions shall be sufficient grounds for cancellation of the policy.

The assigned carrier shall also endeavor to contemporaneously send to the agent copies of correspondence to the employer relating to good faith entitlement, failure or refusal to comply, or other violations of policy or Plan terms or conditions.

Any insured employer so cancelled must reestablish eligibility or must demonstrate entitlement to the Plan Administrator before any further assignment can be made under this Plan.

**d. Effective Date of Policy**

Subject to Rule 4-A-3-f below, policies must be issued, renewed, or reinstated without a lapse in coverage when premium is received or U.S. postmarked prior to the policy effective date or cancellation date.

**e. Renewal and Nonrenewal of Coverage**

At least forty-five (45) days prior to the expiration date of insurance, the assigned carrier shall send a renewal proposal or notice of impending expiration of coverage to the insured, the agent and the Plan Administrator. Upon receipt of the required premium, the policy shall be issued in the normal manner and a copy of such policy and all endorsements, properly identified as a WCIP or AR (Assigned Risk) policy, shall be furnished to the Plan Administrator within the time frame and in the format established by the Plan Administrator.

**f. Reapplication and Reassignment to the Plan**

Any assigned carrier unwilling to renew an employer assigned to it shall notify the employer, agent, and the Plan Administrator at least forty-five (45) days in advance of expiration, giving a reason or reasons acceptable to the Plan Administrator. Reassignment will require the submission of a properly completed application.

**g. Cancellation for Voluntary Coverage**

Notwithstanding Rule 4-A-3-j, any insurer that wishes to insure an employer as voluntary business may do so at any time. If such insurer is not the assigned carrier, the assigned carrier shall cancel its policy pro rata and the assignment shall automatically terminate as the effective date of the voluntary insurer's policy.

**h. Notification of Outstanding Premium**

Outstanding premium or other monetary policy obligation information identified by the assigned carrier or its representative shall be provided to the Plan Administrator in accordance with the appropriate performance standards or other legal or regulatory requirements.

**i. Policyholder Services**

The assigned carrier shall provide to its policyholders and their designated agents/producers access to audit, loss control, and safety services; prompt, professional handling of claims, including investigation, resolution, and communication; fair and prompt responses to complaints and disputes; and access to appropriate information regarding the classification of the business and the factors influencing the policy premium.

**j. Confidentiality of Information**

The assigned carrier shall keep in confidence and shall not, except as directed by the insured or the agent/producer of record, or as otherwise may be required by law or regulatory authority, disclose to any third party, or use for the benefit of itself or any third party, such information pertaining to a policyholder as it may obtain by virtue of its position as the assigned carrier. Such information shall be used solely for the evaluation, underwriting, and issuance of coverage under this Plan and not for any other purpose. The assigned carrier shall not use any information it obtains in this capacity as the assigned carrier to request, encourage, or solicit employers it insures under this Plan to utilize the services of any specific insurance agent, agency, broker, insurer, or group of insurers for purposes of providing voluntary workers compensation insurance or other lines of insurance to such employer.

**4. PARTICIPATION**

All insurers licensed to write workers compensation insurance in this state are required to participate in this Plan. All affiliated insurers must select the same option. An insurer must satisfy its participation required by selecting one of the following options:

**Option 1:** Provides for becoming a direct assignment carrier and receiving assigned risk assignments from the Plan Administrator. Any policy issued by an insurer that has selected this option will not be eligible for reinsurance through the Reinsurance Agreement(s) among members of the Association.

**Option 2:** Provides for subscribing to the Association Bylaws.

If Option 1 is selected, one insurer may be designated to accept direct assignments on behalf of all affiliated insurers.

Any insurer wishing to select Option 1 must receive prior approval from the Plan Administrator. Application for such approval must be made no later than ninety (90) days prior to the end of any calendar year. The Plan Administrator must review the application and approve or disapprove it within sixty (60) days of receipt of the request. If the application is approved, that insurer shall become a direct assignment carrier on January 1 of the year following the Plan Administrator's approval. Such approval shall continue in effect until terminated (a) by the mutual agreement of the insurer and the Plan Administrator, (b), upon notice from the insurer to the Plan Administrator at least 90 days prior to the end of the calendar year that the insurer elects, effective as of January 1 of

the following year, another manner of satisfying its participation requirement under the Plan, or (c) upon the disqualification of the insurer as a direct assignment carrier.

Any insurer wishing to select Option 1 must:

- Maintain a minimum Best's rating of A-;
- Agree to conform, at a minimum, to such standards of performance as may be implemented by the Plan Administrator;
- Agree to maintain necessary facilities to provide risks assigned to it the same level of service rendered to its voluntary business; and
- Execute the Plan Administrator's direct assignment contract.

An insurer that fails to make application to the Plan Administrator for approval as a direct assignment carrier at least ninety (90) days prior to the end of any calendar year shall automatically be deemed to have selected Option 2 for the following year. If the Plan Administrator fails to act on a letter of application or disapproves the letter of application for direct assignment carrier status, such insurer shall automatically be deemed to have selected Option 2. During the period of time an application is pending or an appeal is pending before the Plan Administrator with regard to a disapproved letter of application for direct assignment carrier status, an insurer shall automatically be deemed to have selected Option 2 for the period during which approval has not been granted. If previously a subscriber to the Association Bylaws, an insurer seeking to become a direct assignment carrier must also comply with the withdrawal provision in the Bylaws.

An insurer applying to be licensed in this State to write workers compensation insurance after this Plan has been approved and which desires to become a direct assignment carrier must submit its application to become a direct assignment carrier at the time it subscribes to and becomes a member of the North Carolina Rate Bureau. The Plan Administrator shall approve or disapprove the application within sixty (60) days.

If a licensed workers compensation insurer has not made an election, that insurer shall be deemed to have selected Option 2 until the next Plan membership election, at which time the insurer may then make its own participation selection. An insurer shall automatically be deemed to have selected Option 2 for the following calendar year when the insurer has an opportunity to make a participation selection and fails to do so.

Whenever participation under the Association Bylaws consists of those insurers cumulatively writing less than forty (40) percent of the total net workers compensation insurance premiums written by all insurers in this state as calculated in accordance with the preceding calendar year figures or whenever the Plan Administrator determines the capacity of servicing carriers to handle assignments made pursuant to the Rules for Eligibility and Assignment section falls below a level which is adequate to handle all the assignments being made, or whenever the reinsurance mechanism provided pursuant to the Association Bylaws is terminated, those insurers that selected Option 2 shall, as of January 1 of the following year, automatically be deemed to have selected Option 1 for employers insured effective on or after said January 1. Under this provision all licensed insurers shall automatically be deemed approved as direct assignment carriers and shall not need to seek Plan Administrator approval.

## 5. PLAN ADMINISTRATOR

In recognition of the interests of the participating companies who have subscribed to the Association Bylaws, the Plan Administrator will consult with the Board of Directors, as appropriate, in the course of carrying out its duties and responsibilities with respect to the establishment of servicing carrier eligibility requirements under Rule 4-A-6-a and performance standards under Rule 4-A-6-c. The Plan Administrator shall also be responsible for determining the expenses for the operation of the Plan, and shall assess each insurer participating in the Plan for those expenses on an equitable basis as determined by the Plan Administrator. The Plan Administrator will have the following duties and responsibilities in addition to any others set forth in this Plan:

- a. Administering, managing, and enforcing the Plan subject to the provisions contained herein;
- b. Determining the methodology and formula for making assignments to assigned carriers pursuant to the Assignment Formula section and securing the necessary information in order to make the assignments;
- c. Processing assigned risk applications pursuant to the requirements of this Plan;
- d. Administering the Plan with respect to the approval of direct assignment carriers;
- e. Establishing eligibility criteria for servicing carriers and selecting servicing carriers by competitive bid process or otherwise;
- f. Establishing written performance requirements for servicing carriers, including but not limited to:
  - Verification of ongoing Plan eligibility for the employer
  - Issuance of policies and endorsements
  - Filings with administrative agencies
  - Maintenance of premiums on policies consistent with manual rules, rates, rating plans, and classifications
  - Completion and billing of final audits
  - Collection of premium
  - Claim services, including investigation, disability management, and medical cost control
  - Loss control services and safety information to encourage employers to make safety a part of their business
  - Payment of agent commissions
  - Issuance of renewal proposals and non-renewal notices
  - Assurance of insured and insurer compliance with all terms and conditions of the policy contract
  - Resolution of complaints and response to insured/agent inquiries
  - Reporting financial and statistical data;
- g. Monitoring servicing carrier performance and enforcing performance requirements and incentives;
- h. Administering the dispute resolution mechanism as provided in the Dispute Resolution Procedure section;

- i. Developing and implementing assigned risk operating rules and forms to the extent necessary to carry out the purposes of this Plan;
- j. Informing the Commissioner of any insurer that is not participating in this Plan; and
- k. Monitoring the performance and operation of the Plan and initiating amendments thereto as appropriate.

## **6. SERVICING CARRIERS**

With respect to the servicing carriers selected, the following shall apply:

The Plan Administrator shall also be responsible for determining the expenses for the operation of the Plan, and shall assess each insurer participating in the Plan for those expenses on an equitable basis as determined by the Plan Administrator.

### **a. Eligibility to Act as a Servicing Carrier**

The Plan Administrator shall establish written requirements that insurers must meet in order to be eligible to act as a servicing carrier. An insurer that has been approved as a direct assignment carrier pursuant to Option 1 under the Participation section is not eligible to be selected as a servicing carrier under this Plan. From among those insurers that are eligible and have applied to act as a servicing carrier, and subject to regulatory approval or review where applicable, the Plan Administrator shall select a sufficient number of servicing carriers that are needed to handle the assignments made pursuant to this Plan. Before the selection process begins, the Plan Administrator will consult with the Board of Directors, as appropriate, in determining the number of servicing carriers that are needed to handle the assignments made pursuant to this Plan. The Plan Administrator may terminate the servicing carrier status of any insurer that fails to meet the servicing carrier requirements on a continuing basis.

### **b. Servicing Carrier Operations Report**

Each servicing carrier shall provide a report to the Plan Administrator in such format and time as determined by the Plan Administrator. This report, among other things, shall provide information on the servicing carrier's operations related to the Plan business in the following areas: underwriting, auditing, claims, loss control, premium collection, and customer service.

### **c. Standards for Servicing Carrier Performance, Compensation and Incentives**

The Plan Administrator shall establish written minimum levels of acceptable performance for servicing carriers and shall establish procedures for measuring servicing carrier performance. In recognition of the interests of the participating companies who have subscribed to the Association Bylaws, the Plan Administrator will consult with the Board of Directors, as appropriate, in establishing these standards. Servicing carriers shall manage losses in compliance with the performance standards established hereunder. The Plan Administrator shall also establish the compensation for servicing carriers which shall take into consideration, among other things, provisions for (1) rewarding servicing carriers for positive action targeted at

reducing losses and costs, (2) disincentives for inefficiencies and poor service, and (3) servicing carrier capacity.

**d. Monitoring and Enforcement**

The Plan Administrator shall monitor and review servicing carrier performance by (1) reviewing the operations reports, (2) requiring and reviewing self-audits, (3) conducting on-site audits, and (4) reviewing any other information available that relates to the servicing carrier. The Plan Administrator shall require servicing carriers to maintain desired performance levels and shall take appropriate remedial action where necessary including, but not limited to, establishment and administration of a progressive discipline program which may lead to terminating an insurer's servicing carrier status. Any action taken by the Plan Administrator under this provision is subject to review under the Dispute Resolution Procedure section. In order to fulfill its responsibilities under this Plan, the Plan Administrator shall have the right, itself or through authorized representatives, at all reasonable times during regular business hours, to audit and inspect the books and records of any servicing carrier with respect to any policies, claims, or related documents coming within the purview of this Plan, the Association Bylaws, or the Reinsurance Agreement(s). The Plan Administrator may provide the Board of Directors with a report and other data as appropriate, concerning the Plan Administrator's monitoring and enforcement activities related to servicing carriers.

**7. DIRECT ASSIGNMENT CARRIERS**

The Plan Administrator shall establish written performance requirements. The Commissioner of Insurance shall monitor direct assignment carrier performance through market conduct examinations, or through such other methods that he shall deem appropriate.

**8. INTERSTATE ASSIGNMENTS**

**a. Additional States Requested During the Policy Period**

Any employer assigned under this Plan and desiring workers compensation insurance for operations in states other than that covered by this Plan may request its assigned carrier to furnish such insurance in such additional states. Workers compensation insurance in such additional states may be written by the assigned carrier on a voluntary basis and in accordance with the law, rates, rules, classifications, and regulations applicable to the voluntary workers compensation market in those states.

If the assigned carrier does not wish to provide the additional states on a voluntary basis, such assigned carrier may provide assigned risk coverage in such additional states subject to the following:

- 1) Workers compensation insurance may only be provided in accordance with Rules of Eligibility and Assignment section above in those states that have a Workers Compensation Insurance Plan that is similar to this Plan and that allows employers applying for coverage under those Plans to obtain coverage for operations in this State.
- 2) An assigned carrier providing such insurance shall collect all premiums due on operations located in such other states. The effective date of such insurance in such additional states

shall be the day after premium is received; however, in the event coverage in such additional states is on an "if any" basis, the effective date of such coverage shall be the day following receipt of an acceptable request for such insurance by the assigned carrier. A copy of the policy Information Page and all endorsements, properly identified as a WCIP or AR (Assigned Risk) policy, shall be submitted to the appropriate Plan Administrator having jurisdiction in the State where the coverage is effected.

- 3) The rates, rating plans, classifications, and policy forms used to provide coverage in such additional states shall be those that are applicable to the residual market and are on file and have been approved by the regulators in those additional states and authorized for use in the residual market by the Plan Administrator.
- 4) In the event the assigned carrier is a servicing carrier, in order to combine multiple states on a single policy, the assigned carrier must also be a signatory to an agreement providing reinsurance for residual market employers similar to the Association Bylaws in each state where the coverage shall be provided. If the assigned carrier is a direct assignment carrier pursuant to Option 1 in the Participation section, in order to combine multiple states on a single policy, it must also be authorized to act as a direct assignment carrier or servicing carrier in each state where the coverage shall be provided. Separate policies must be issued for states in which the insurer is a direct assignment carrier and for states in which the insurer is a servicing carrier.

An assigned carrier unwilling or unable to provide insurance for an employer in additional states either on a voluntary basis or in accordance with this section shall refer the request to the Plan Administrator.

**b. Multi-state Policy Procedure at Time of Application**

Employers who make application for workers compensation insurance under another state's Workers Compensation Insurance Plan may purchase coverage for operations in this State without meeting the application requirements of this Plan, provided: (a) the employer qualifies for such insurance under the other state's Plan, (b) the employer is in good faith entitled to insurance under this Plan, (c) the other state's Plan is similar to this Plan, (d) that Plan also provides for interstate assignments, and (e) the payroll for the employer's operation in this State is not greater than the payroll in the other state.

The rates, rating plans, classifications, and policy forms used to provide coverage in this State shall be those that are applicable to the residual market in this State and are on file and have been adopted by the Plan Administrator for use in the residual market and approved by the Commissioner.

The administrator of the other Plan is authorized to assign employers with operations in this state to the other Plan's assigned carriers subject to the following conditions:

- 1) If the assigned carrier is a direct assignment carrier, it must also be a direct assignment carrier in this state pursuant to Option 1 of Rule 4-A-4, or a servicing carrier in this state pursuant to Rule 4-A-6-a.

- 2) If the assigned carrier is a signatory to an agreement providing reinsurance for residual market employers similar to this State's Association Bylaws, it must also be a signatory to the Association Bylaws in this state or a direct assignment carrier in this state. In addition, if the payroll for the employer's operation in this state is greater than \$250,000, and if the assigned carrier is a signatory to the Association Bylaws or a similar document in the other state, it must also be a servicing carrier or a direct assignment carrier in this State. If there is no eligible assigned carrier in this State that is also an insurer in the state of assignment, then the above payroll limitation may be removed at the discretion of the Plan Administrator or the employer may be required to submit a separate application for coverage in this State.
- 3) The other state's Plan must give the Plan Administrator in this State similar authority to make interstate assignments.

With regard to interstate assignments and policies, this Plan shall have jurisdiction over all disputes resulting from the application of rules, programs and procedures that are specific to this State. Disputes regarding application requirements shall be under the jurisdiction of the state's Plan where the application was filed.

## 9. ASSIGNMENT FORMULA

The following procedures describe the mechanism used to provide for the random and equitable distribution of employers under this Plan to assigned carriers. This distribution is based on each direct assignment carrier's allocable percentage and the combined allocable percentage of all servicing carriers, and the amount of estimated premium in the Plan, so far as practicable. When assigning an employer to an insurer, the mechanism considers the employer's prior Plan coverage, special requirements (i.e., additional states or federal coverage) and premium size.

The mechanism provides that the allocable percentage for each assigned carrier shall be determined as follows:

- a. If the assigned carrier is a direct assignment carrier, its allocable percentage will be equal to its net premiums written as compared to the total net premiums written in this State.
- b. If the assigned carrier is a servicing carrier, it shall be responsible for providing services on behalf of those insurers that have elected to meet their Plan assignment requirements by subscribing to the Association Bylaws pursuant to Option 2 of the Participation section. Its allocable percentage will be determined by the Plan Administrator; however, the combined allocable percentages for all servicing carriers shall be equal to the combined net premiums written for all signatories to the Association Bylaws as compared to the total net premiums of all insurers participating in the Plan in this State.

The Plan Administrator may override the random assignment process to ensure the availability of requested Plan coverages to the employer.

## 10. DISPUTE RESOLUTION PROCEDURE

Any person affected by the operation of the Plan including, but not limited to, participating companies, insureds, agents, and assigned carriers, who may have a dispute with respect to any aspect of the Plan may seek a review of the matter by the Plan Administrator by setting forth in

writing with particularity the nature of the dispute, the parties to the dispute, the relief sought and the basis thereof. The Plan Administrator may secure such additional information as it deems necessary to make a decision.

Appeals from employers and insurers on Plan matters regarding individual employer disputes shall be within the jurisdiction of the mechanism established to handle such appeals under the applicable rating law. All other disputes shall be handled as follows:

- a. If the dispute relates to the general operation of the Plan, excluding individual employer disputes, those arising under the Association Bylaws, and those pertaining to the selection of servicing carriers, the Plan Administrator shall review the matter and render a written decision with an explanation of the reasons for the decision within thirty (30) days after receipt of all the information necessary to make the decision. Any party affected by such decision made by the Plan Administrator may seek a *de novo* review by the Commissioner by requesting such review, in writing, within thirty (30) days after the date of such decision.

In reviewing any such matter, the Commissioner shall follow normal hearing procedures. The Commissioner shall decide the dispute in accordance with applicable state laws and regulations, with due consideration to approved rules, procedures, and rating plans and pursuant to the provisions of the approved North Carolina Workers Compensation Insurance Plan.

- b. If the dispute relates to any competitive bid process, the Bid Protest Procedure contained in the applicable Request for Proposal shall apply.
- c. Except as provided below, if the dispute arises under the Association Bylaws or Reinsurance Agreement(s), the administrator designated under the Association Bylaws (the "Reinsurance Administrator") shall first review the matter and render a written decision with an explanation of the reasons for the decision within thirty (30) days after receipt of all the information necessary to make the decision. Any party affected by the decision may seek a review by the Board of Directors established under the Association Bylaws by requesting such review, in writing, within thirty (30) days of the date of the decision by the Reinsurance Administrator under the Association Bylaws. The Board of Directors may (1) consider the matter and render its written decision pursuant to the procedures set forth in the Association Bylaws, or (2) waive its decision and offer the aggrieved party the option of appealing directly to the Commissioner or submitting the dispute to arbitration in accord with the terms and conditions established by the Board of Directors. Any party affected by a decision of the Board of Directors may seek a *de novo* review by the Commissioner by requesting such a review, in writing, within thirty (30) days of the date of the Board of Directors' decision.

If the dispute relates to the expulsion of a participating company under the Association Bylaws by the Board of Directors or the non-continuation of the reinsurance afforded under the Association Bylaws, any appeal may be taken directly to the Commissioner without first complying with the procedures contained herein. The Commissioner shall have exclusive jurisdiction over all such disputes. In reviewing any such matter, the Commissioner shall follow those procedures applicable to administrative hearings as set out in Article 3A of Chapter 150B of the NC General Statutes and 11 NCAC 1.0400 et seq.