

Introduction of New Hampshire Special Workers Compensation Class Code 8872

According to RSA 281-A:6, workers' compensation coverage for "domestic workers" (persons performing domestic services for pay in an employer's residence) is provided by a tenant's or homeowners policy, in the absence of a workers' compensation policy covering them. This coverage protects a housekeeper, the neighbor hired to mow a lawn or the occasional babysitter. However, the term "domestic services" as defined in RSA 281-A:2,V excludes the work of companions or caregivers of children or others who are physically or mentally infirm. This requires many elderly or disabled people who need to hire a caregiver to purchase workers' compensation coverage in the commercial market. If the employee assists the individual in physical activities (e.g. getting in or out of bed, dressing or bathing), the rates are determined by NCCI class code 8835, intended for at-home nursing care, which can make the coverage expensive.

In order to help elderly and infirm residents remain in their homes longer, New Hampshire began an effort to make workers' compensation in this situation more affordable. House Bill 465, presented to the New Hampshire House of Representatives in the 2015 session, would have required homeowners policies to cover this type of workers' compensation. While the bill was deemed inexpedient to legislate in committee, the Insurance Department worked with the House Labor Committee and representatives of the National Association of Elder Law Attorneys for a non-legislative solution to the problem. Several states, including Massachusetts, have established special class codes to reduce the cost of workers' compensation coverage for certain classes of in home physical assistance. The Insurance Department directed the National Council on Compensation Insurance (NCCI) to create a similar class code for use in New Hampshire. This should help reduce the cost of workers' compensation insurance to those who hire at-home assistants directly.

The new NCCI class code (8872) was approved by the insurance department on January 13, 2016 and will become effective April 1, 2016. Based on an analysis of similar exposures in other states, the Insurance Department has established the 2016 loss cost at 50% of existing code 8835. The loss cost will adjust in future years based on actual experience. The minimum premium will be \$650, compared to \$1,000 for code 8835.

Code 8872 is assigned to individuals who provide homemaker and companion services while physically assisting convalescent, aged, acutely or chronically ill or otherwise physically or mentally infirm persons in daily living activities, principally inside the employer's residence. It is important to note that this code applies only to workers who are employed and paid directly by the person they are assisting or by the person's family or representative; it cannot be assigned with any other classification. If the worker is employed by a health care agency or if the worker has his or her own business, code 8835 still applies.

By providing reasonably priced workers' compensation coverage, this new code will allow insurers to help meet the needs of many people who need assistance in daily living at home.