# 2021 Status Report on the South Carolina Workers' Compensation Insurance Market

SUBMITTED BY:

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# I. Report Scope and Methodology

This report is submitted in accordance with § 38-73-526 of the South Carolina Code of Laws. It provides statistical information on the state of the workers' compensation market. It also addresses regulatory issues within the South Carolina workers' compensation insurance system, including the affordability and availability of workers' compensation insurance coverage. It is based upon data collected from insurers concerning: 1) the loss cost multiplier; 2) loss cost multiplier filings received subsequent to the enactments of 2007 S.C. Act No. 111 and 2016 S.C. Act No 213; and 3) detailed premium and exposure data compiled by the National Council on Compensation Insurance (NCCI) and the National Association of Insurance Commissioners (NAIC). Additionally, South Carolina Department of Insurance (SCDOI) staff reviewed various studies and reports on the South Carolina workers' compensation insurance system as well as other literature on issues and trends in the workers' compensation insurance industry.

## II. Report Limitations

This report does not constitute an empirical study on regulatory issues affecting the South Carolina workers' compensation insurance system. It has been prepared from the best available information on workers' compensation insurance by sources considered experts in the field of insurance regulation and workers' compensation (see footnotes for identification of referenced sources). The data used in this report were compiled from a variety of sources. Consequently, those sources may have used different methods to collect and compile the data provided. The SCDOI relied upon the expertise of these sources. Therefore, no independent verification of the data or information from outside sources was performed by the SCDOI.

## III. Executive Summary

Workers' compensation insurance provides compensation for employees that are injured, made sick, or killed on the job. This coverage includes, for example, payment of the costs of medical treatment and lost wages. It also provides disability and death benefits. The workers' compensation system replaced the common law tort system and the negligence standard for workplace injuries and is the exclusive remedy for work-related injuries and deaths. The workers' compensation system is a no-fault system under which employers are held strictly liable for providing medical, death, disability and wage replacement benefits for injured or killed workers. In return, injured workers waive most of their rights to seek redress for their injuries and losses through the court system. Many believe that the system is an important influence on the economic development of the state—due to the impact that the cost of a state's workers' compensation system has upon the state's ability to attract and retain businesses.

Amid growing concerns about the increasing costs of workers' compensation insurance in the state, the South Carolina General Assembly revised many aspects of the workers' compensation laws in 2007 via 2007 S.C. Act No. 111. The primary goal of this reform effort was to stabilize the costs of South Carolina's workers' compensation system. In 2016, the South Carolina General Assembly passed S.C. Act No. 213 which amended Sections 38-73-525 and 38-73-1210 of the South Carolina Code of Laws. The 2016 modifications made it a legal requirement that every insurer writing workers' compensation in South Carolina file to adopt the new loss costs within 60 days of the SCDOI's approval date of those loss costs and that the effective date of that adoption be within 120 days of the effective date of the approved NCCI loss costs. These changes were in response to concerns raised in the SCDOI's previous annual reports and noted in the Legislative Audit Council's 2009 report, which stated that the use of older, outdated loss costs was inappropriate.[1]

[1] *A Review of the Department of Insurance*, South Carolina General Assembly Legislative Audit Council, June 2009.

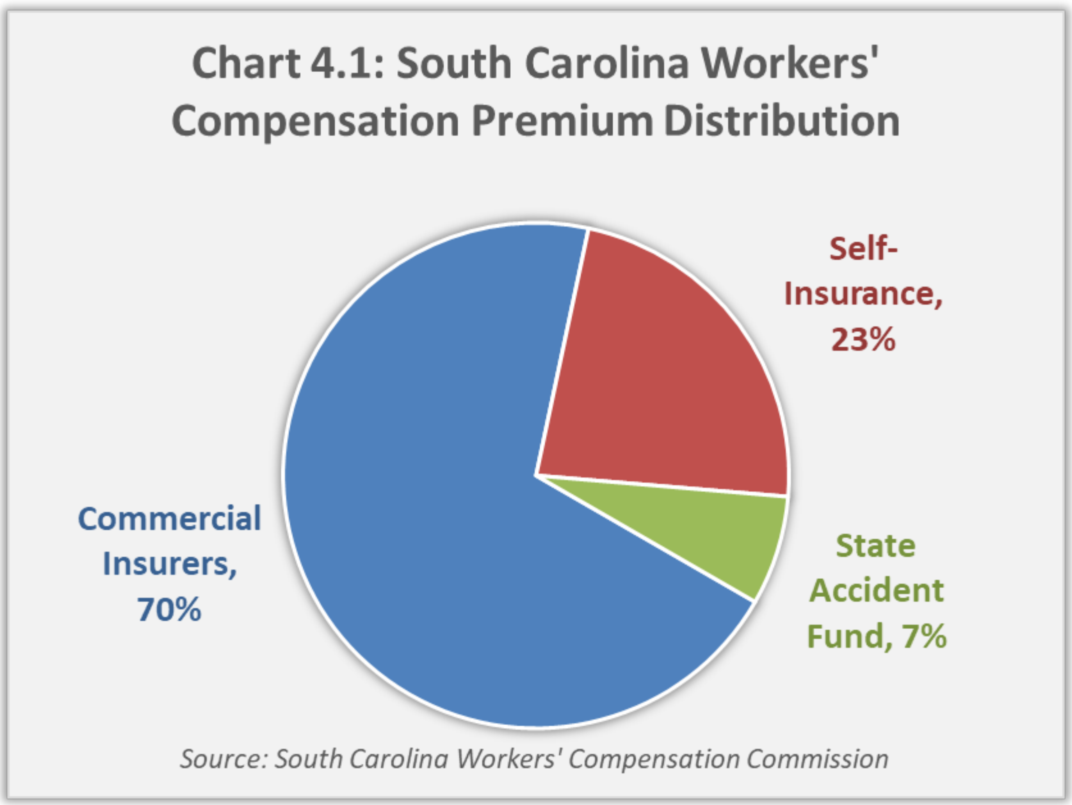
Overall, the South Carolina workers' compensation insurance market appears to be stable. Insurers wrote $779 million in direct voluntary market premiums in 2020, a decrease from the $807 million written in 2019. The number of policies in the residual (involuntary) market increased each year from 2012 to 2017 before decreasing each year from 2018 to 2020.

The NCCI overall loss costs decreased each year from 2018 to 2021. A filing for an overall 9.8% decrease was approved by the SCDOI in December and will take effect February 1, 2022. The frequency of lost-time claims, a large component and driver of workers' compensation costs, has fallen in recent years.

# IV. Market Overview

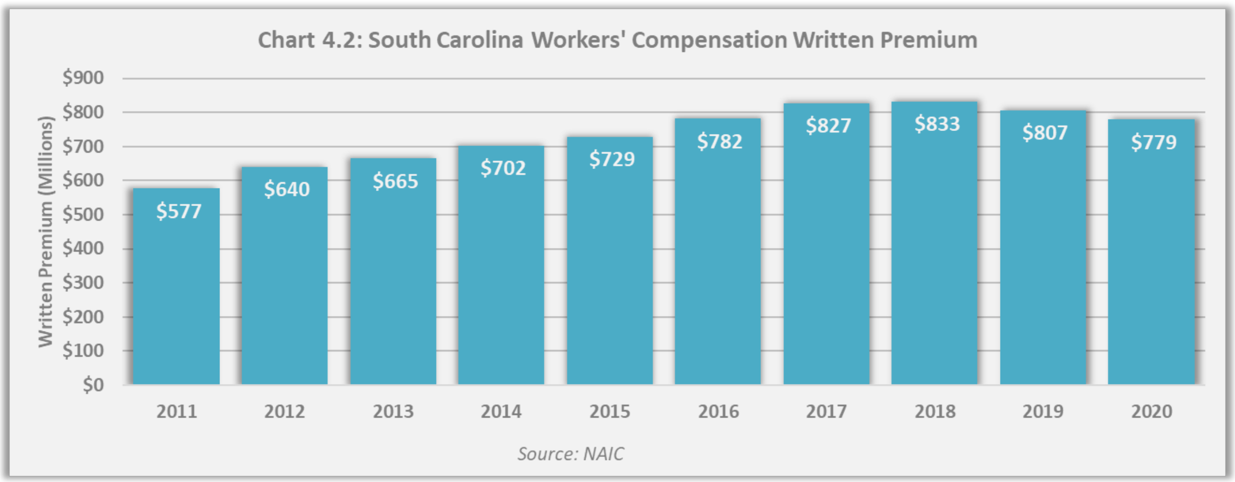
## A. Overview of the Workers' Compensation System

Workers' compensation laws were enacted to benefit both injured workers and employers: workers receive partial—as well as prompt, predictable, and certain—compensation without regard to fault in exchange for relinquishing their right to sue their employers in tort for damages. As shown in Chart 4.1 below, the South Carolina Workers' Compensation Commission reports that insurance companies provide 70% of South Carolina's workers' compensation coverage. The remaining coverage is provided through group self-insured funds (such as the State Accident Fund) and individual self-insured employers. Both types of self-insureds share many of the same costs and expenses as an insurance company. Insurance company rates are the focus of this report, but differences will be noted, as appropriate.



## B. State of the South Carolina Workers' Compensation Insurance Market

South Carolina is considered a compulsory state for workers' compensation insurance coverage. Employers with four or more employees are required to provide workers' compensation insurance coverage for their employees.[2] Workers' compensation insurance coverage provided by insurance companies may be purchased in South Carolina in the voluntary market (private insurers) or through the residual market (the South Carolina Workers' Compensation Insurance Plan). Workers' compensation insurance direct written premiums totaled $779 million in 2020 (including $34 million in residual market premium), a decrease of $28 million from 2019 as illustrated in Chart 4.2.




[2] S.C. Code Ann. § 42-1-360 (2002)

## 1. South Carolina's Voluntary Market

### a. Availability

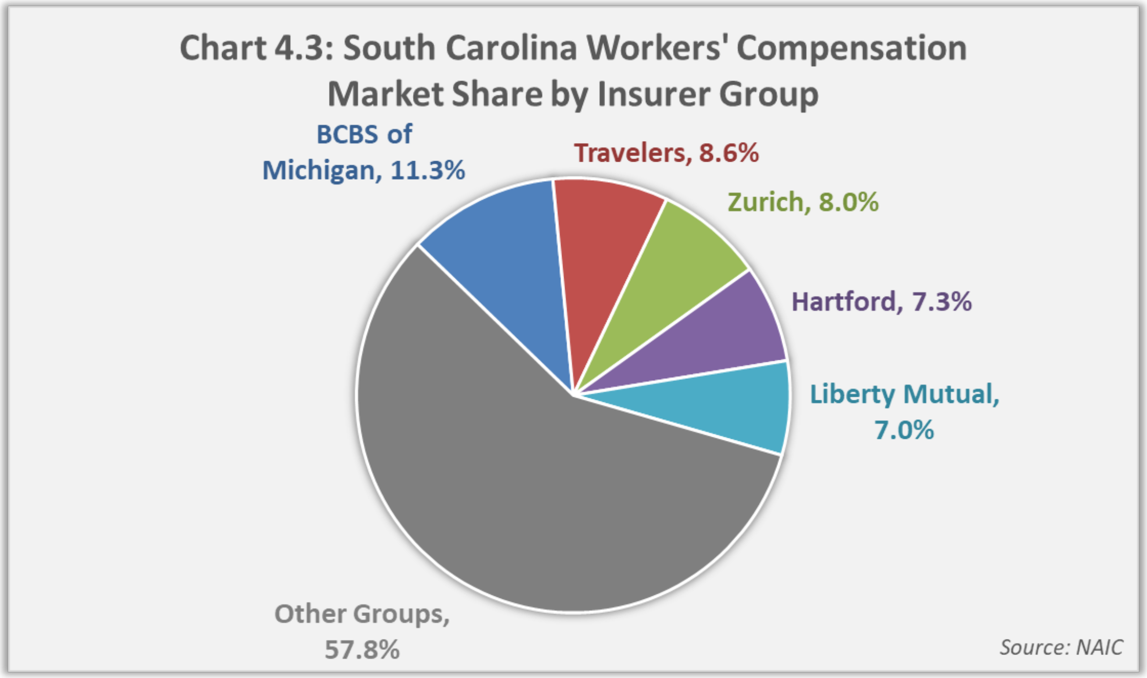
Insurance availability is generally described in terms of insurer capacity and the supply of insurance products within the market. Availability is typically affected by the number and capacity of insurers writing in the market. There were 312 companies with positive written workers' compensation premium in 2020, down slightly from 313 in 2019. As shown in Table 4.1, South Carolina had a net gain of three insurance groups—compared to the average net gain of roughly two insurance groups for the NAIC Southeastern Zone States during the 2015 to 2019 period.

**Table 4.1: Southeastern States Insurer Net Gain (Loss) from 2015 to 2019**

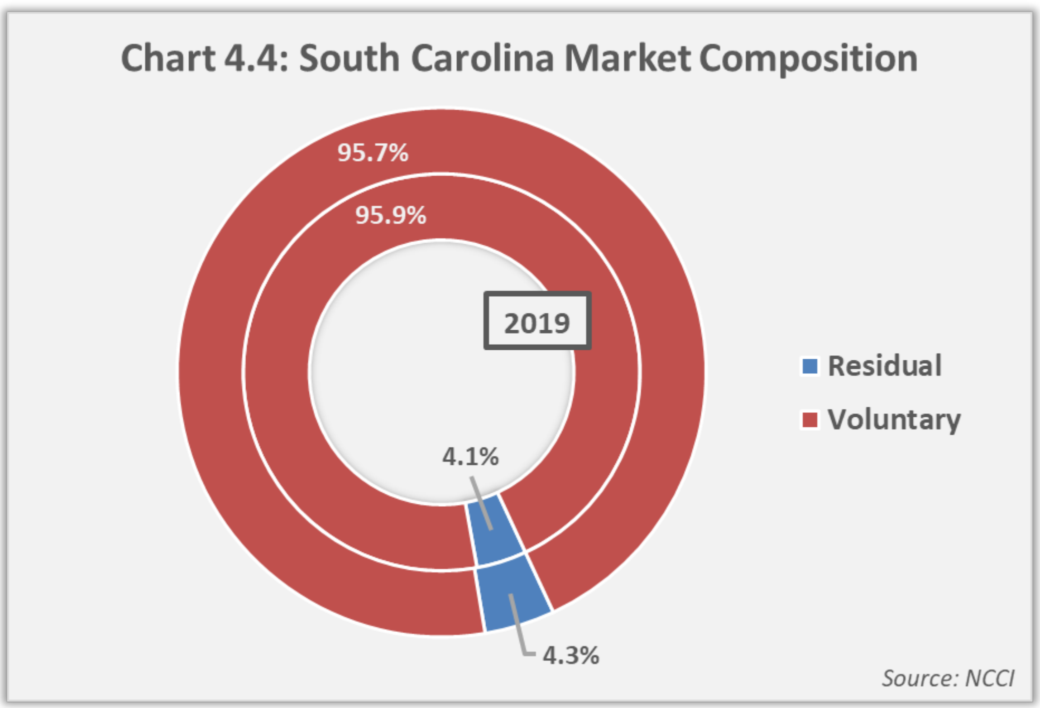
| NAIC Southeastern Zone States | Net Gain (Loss) of Insurers |
|---|---|
| Alabama | 0 |
| Arkansas | 1 |
| Florida | 0 |
| Georgia | 2 |
| Kentucky | 4 |
| Louisiana | 5 |
| Mississippi | 0 |
| North Carolina | 1 |
| **South Carolina** | **3** |
| Tennessee | 8 |
| Virginia | 2 |
| West Virginia | 2 |
| **Southeastern Average** | **2.3** |

*Source: NAIC Competition Database Report*

Many workers' compensation carriers are members of insurance groups that write a significant amount of the overall premium in the marketplace. Chart 4.3 provides the percentage of market share for the top five workers' compensation insurer groups in South Carolina. The aggregate market share held by the top five insurer groups increased slightly from 40.3% in 2019 to 40.8% in 2020.



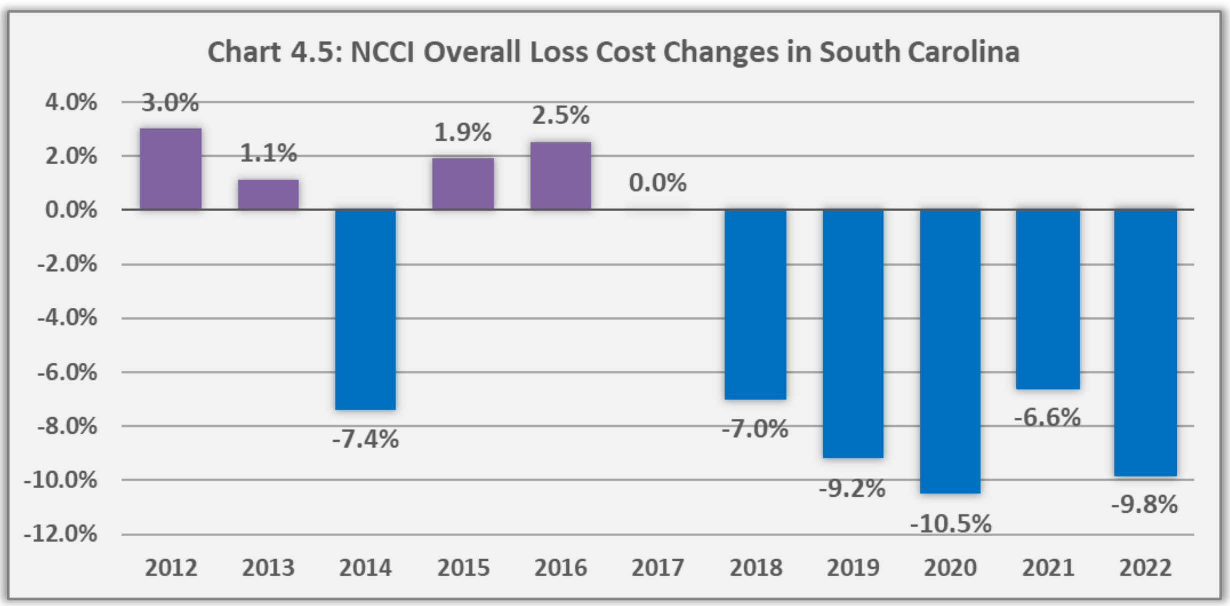

As shown in Chart 4.4, the vast majority of all workers' compensation insurance coverage written in South Carolina is through the voluntary market.



As the foregoing indicates, workers' compensation insurance coverage is generally available for most South Carolina employers. However, small employers and those engaged in hazardous occupations have at times indicated that they have difficulty procuring insurance in the voluntary market. Additional information on South Carolina's residual market can be found in the Assigned Risk Market section of this report beginning on page 13.

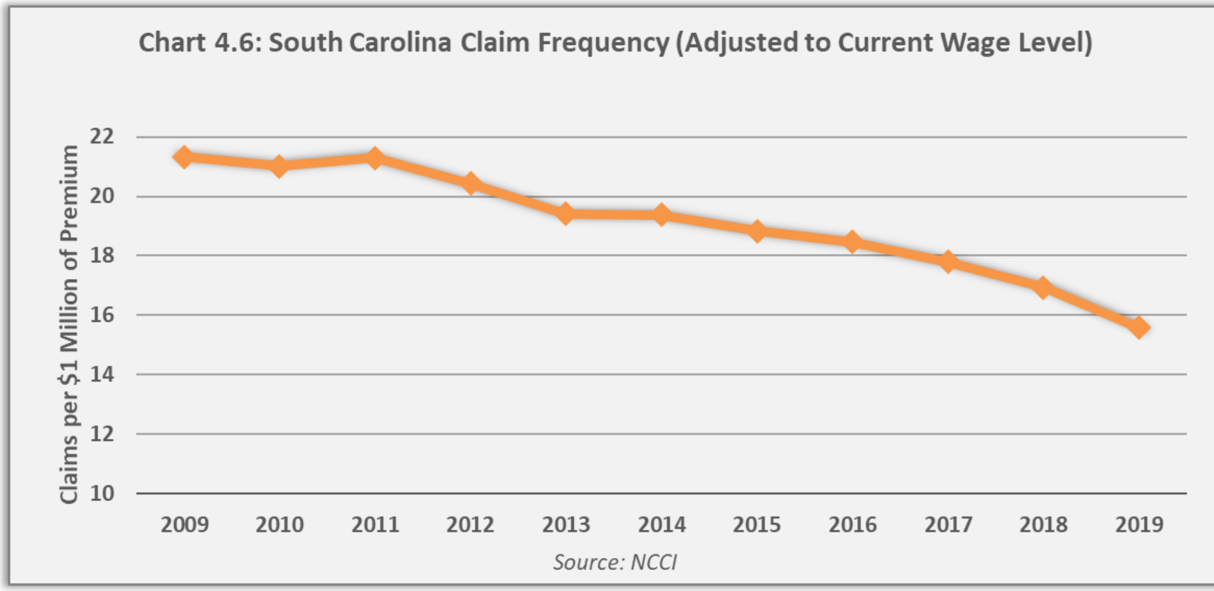
### b. Affordability

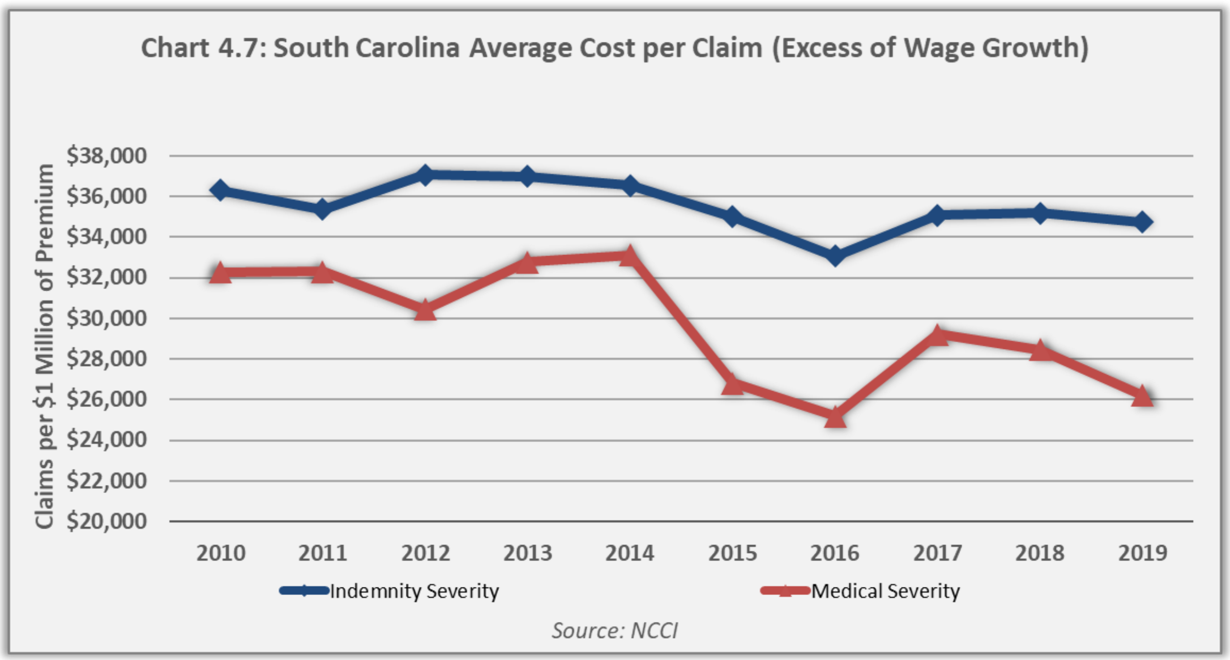
While workers' compensation coverage continues to be available in the voluntary market, the cost of that insurance is always an issue of concern. As shown in Chart 4.5, there were five loss cost decreases and four loss cost increases from 2012 to 2021. A loss cost decrease of 9.8% has been approved by the SCDOI and is scheduled to take effect February 1, 2022.




Loss costs reflect the main driver of workers' compensation costs: claims experience. Claims experience is primarily measured in two ways: (1) the number of workplace injuries (claim frequency) and (2) the average cost of each of these injuries (claim severity). Chart 4.6 summarizes South Carolina's historical lost-time claims (claims where a worker has received wage replacement benefits due to a compensable workplace injury). The data in the chart has been updated to reflect past premiums at today's loss cost and wage levels. This graph illustrates that South Carolina's claim frequency has been decreasing since peaking in 2011.

Chart 4.7 indicates that indemnity severity and medical severity decreased in 2019 (the latest data year available).



## 2. South Carolina's Assigned Risk Market

### a. Availability

Residual markets (sometimes called "involuntary markets") are created by states to assure the availability of insurance coverage. The South Carolina Workers' Compensation Insurance Plan (Insurance Plan) is our state's residual market mechanism for workers' compensation insurance coverage. The Insurance Plan is administered by NCCI and is available to employers who are unable to procure workers' compensation insurance coverage in the voluntary market. A small number of experienced and reputable carriers is charged with writing the risks for businesses in the residual market.[3] The Insurance Plan exists not only for high-risk employers but also for those who cannot obtain workers' compensation insurance in the voluntary market because (1) no South Carolina insurer insures the employer's type of business; (2) the employer has a poor claims history; or (3) the employer has a small number of employees.

The number of policies written in the residual market is a prime indicator of the health of the voluntary market. Generally, having a large number of policies in the residual market is a signal that the voluntary market is either unhealthy or lacks capacity. As noted in Charts 4.8 and 4.9, the Insurance Plan experienced a decrease in its policy count (-4.8%) and an increase in the total premium written (1.9%) in 2020.[4] Additional indicators such as the residual market share, trends, etc., should also be considered when assessing the viability of South Carolina's workers' compensation market and are discussed in the following pages.

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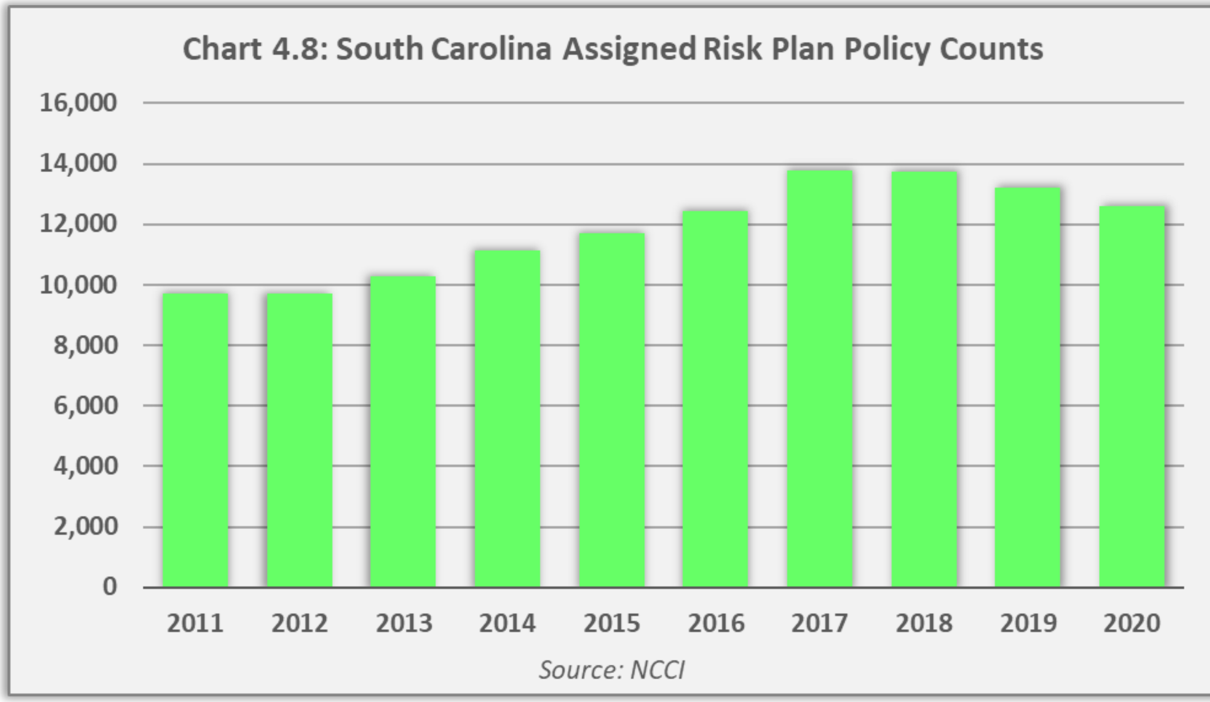
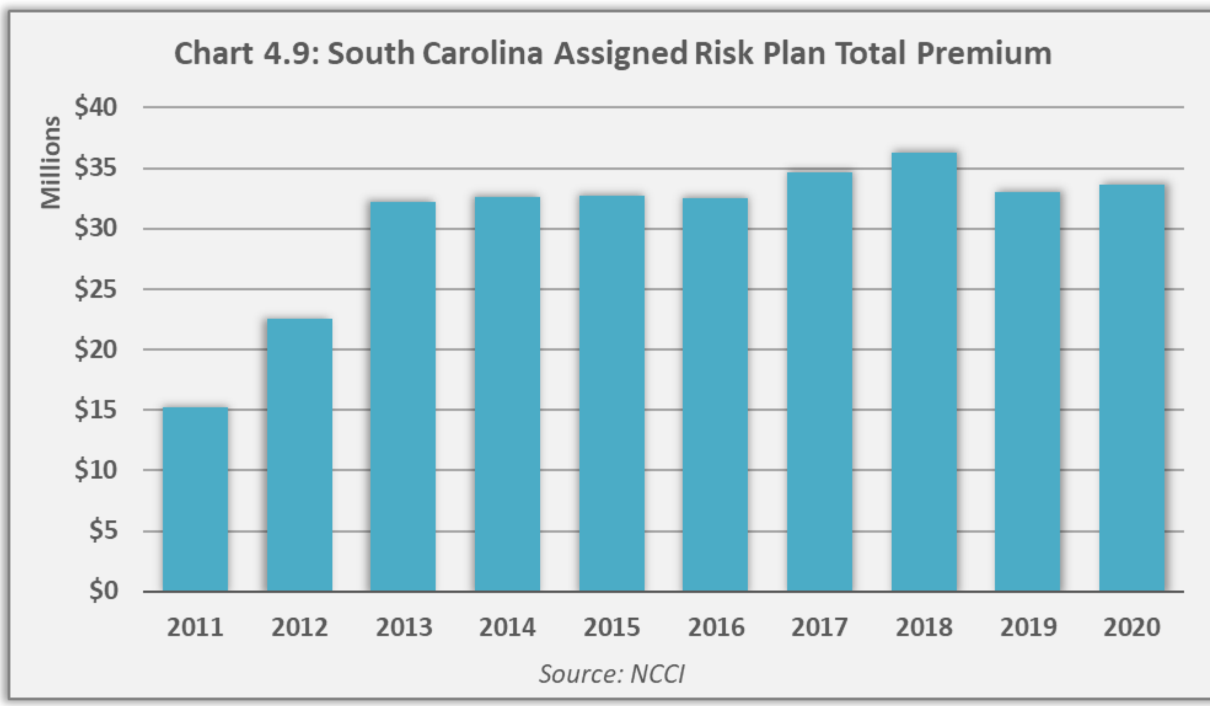
[3] Participating insurers are selected via a competitive bid process to write assigned risk coverage and must accept all applications of eligible employers.

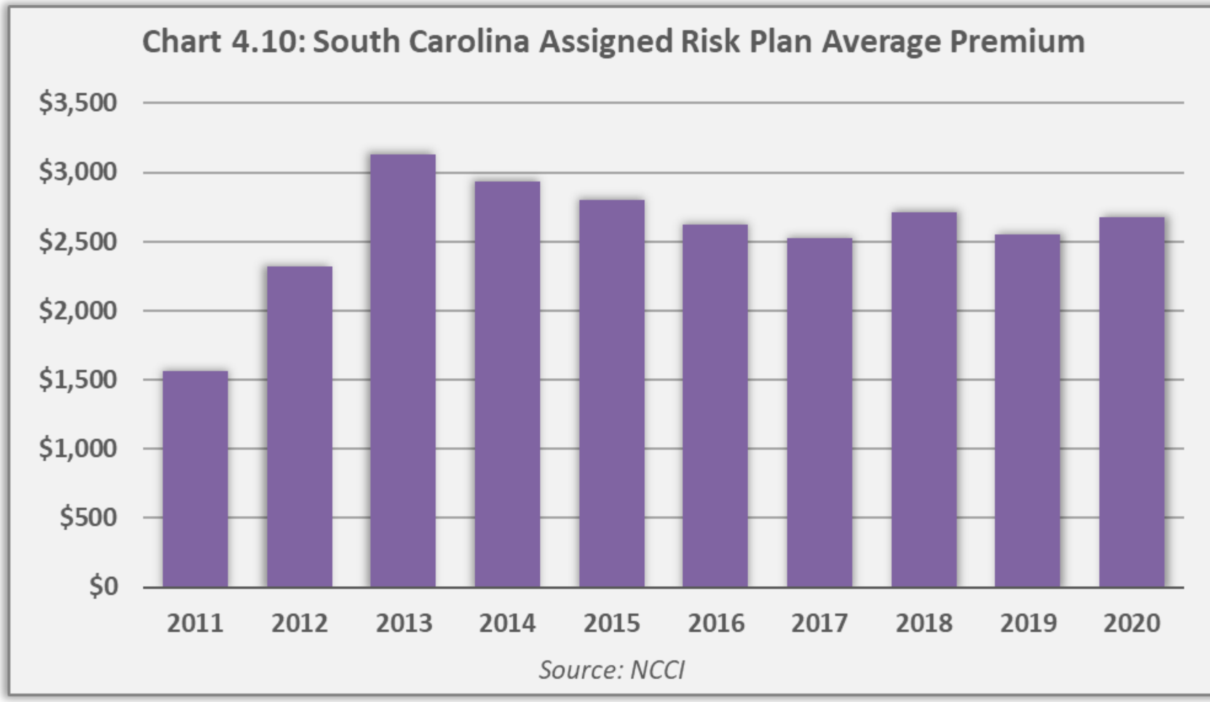
[4] The SCDOI's understanding is that the Assigned Risk Plan premium values conveyed throughout this report are final premium values that the NCCI has collected and verified to be consistent with insurers' annual financial reports. These final written premiums may differ from the initial estimated written premium values which were included in prior reports.




South Carolina's Insurance Plan accounted for 4.3% of 2020's total direct premium writings in the state, up slightly from 4.1% in 2019. Chart 4.10 shows that the average policy premium steadily decreased from 2013 to 2017 before oscillating up and down from 2018 to 2020. This is consistent with the fluctuations in the number of lower dollar premium policies



written in the Assigned Risk Plan during that period.  It is common for both smaller and newer businesses to be placed into the residual market.  In a growing economy, we would expect that the number of smaller and new businesses has risen, contributing to the higher number of lower dollar premium policies.




**b. Affordability**

Residual markets are intended to be the markets of last resort.  They are not designed to compete with the voluntary market.  Accordingly, the rates charged for policies in this market are typically higher than those available in the voluntary market.  However, 84.4% of South Carolina's residual market policies have annual premiums less than $2,500.  In comparison, 77.0% of residual market policies countrywide had premiums less than $2,500.  This means that South Carolina is writing more small premium residual risks than the countrywide average.[5]

As with the voluntary market, the rates charged for policies in the Insurance Plan must comply with the statutory requirement that rates not be inadequate, excessive, or unfairly

[5] 2020 *Residual Market Management Summary*, National Council on Compensation Insurance, 2021.

discriminatory. In fact, South Carolina law requires the Insurance Plan to operate on a self-funded basis. Accordingly, rates may be adjusted in the Insurance Plan as necessary to ensure that it continues to operate on a self-sustaining basis.[6] For the past several years, the SCDOI has studied and then directed rate changes for the residual market that are intended to achieve the self-sufficiency goal.

[6] S.C. Code Ann. § 38-73-540(C) (2015)

## V. Ratemaking Process

Workers' compensation insurance rates are regulated by the SCDOI[7] and consist of two basic components: (1) losses, referred to as "loss costs," and (2) expenses, reflected in the "loss cost multiplier." These terms are more specifically defined as follows:

1. **Loss costs** are the amounts needed to pay medical, indemnity, and disability claims as well as loss adjustment expenses, which are those expenses directly associated with handling claims, including attorneys' fees of both the claimant and the employer.

2. **Loss cost multipliers** reflect the insurer's other costs of doing business, such as salaries, commissions, rent, utilities, and assessments, including payments to the guaranty fund and the residual market. The insurer's profit load is also included in the loss cost multiplier (LCM).

For workers' compensation insurance, the premium is a function of loss costs, the LCM, and the insured employer's payroll. Loss costs vary by class code and are expressed as an amount per $100 of payroll. The loss costs reflect the potential for loss associated with a group of employers engaged in the same type of business or industry. These loss costs are multiplied by the LCM and then by the employer's payroll—divided by 100—to determine the manual premium.

The manual premium is then multiplied by the employer's experience modification factor to determine the standard premium. The experience modification factor is developed by NCCI and compares an employer's actual loss experience by class code to the average experience for all employers for that same class code. Insurers other than workers' compensation carriers generally use their own historical loss experience, expenses, and profit factors to calculate their rates, which are filed with the SCDOI for approval.

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[7] *See* Chapter 73, Title 38 (2015) of the S.C. Code of Laws

The ratemaking process for insurers writing workers' compensation insurance is unique. Workers' compensation insurers do not rely solely on their own loss experience to set their rates. Rather, a third-party rating organization (such as NCCI) collects, compiles, and analyzes loss data from hundreds of insurance companies and for hundreds of job classifications.

The third-party rating organization then files loss costs on behalf of its member insurers with the SCDOI. The filed loss costs are thereafter adopted by each individual voluntary market insurer for developing their own rates. Individual insurers file their own rates reflecting the adopted loss costs of the rating organization and applying their own LCMs. Self-insured funds and employers do not use rating organizations, so their rates are often developed with the help of independent actuaries.

## A. Loss Costs

### 1. Role of Rating Organizations in the Ratemaking Process

In South Carolina, workers' compensation insurers are required by statute to be members of a non-partisan rating bureau or rating organization.[8] Each rating organization must be licensed by the SCDOI.[9] NCCI has been licensed as a rating organization in South Carolina since 1947. It is a nonprofit organization which compiles and reports workers' compensation data, statistics, and research. NCCI collects statistical and financial information concerning workers' compensation exposure and claims from insurers in nearly 40 jurisdictions, including South Carolina.

As South Carolina's licensed rating organization, NCCI files loss costs on behalf of its member insurers. The SCDOI reviews these filings to ascertain that the loss costs are not excessive, inadequate, or unfairly discriminatory.[10] If the SCDOI disapproves a loss cost filing, NCCI or the South Carolina Consumer Advocate each have the right to request a hearing before

[8] S.C. Code Ann. § 38-73-510 (2015)
[9] S.C. Code Ann. § 38-73-1230 (2015)
[10] S.C. Code Ann. § 38-73-430 (2015)

the South Carolina Administrative Law Court. If the SCDOI approves the filing, the Consumer Advocate may on its own initiative request a hearing before the Administrative Law Court.

NCCI generally updates loss experience annually and makes filings based on the updated experience. However, due to the lengthy nature of the review and approval process for increases, which in some past cases has involved extensive litigation in the Administrative Law Court, the approved loss costs can change less frequently than annually. This has an impact on the ratemaking process.

As stated previously, South Carolina law requires each insurer writing workers' compensation coverage in South Carolina to adopt the most recently approved loss costs and apply its LCM or file for a change in its LCM by changing its "loss cost modification factor" or any other expense component.

### 2. The SCDOI's Role in the Regulation of Rating Organizations

When NCCI makes a loss cost filing, the SCDOI reviews that filing to determine whether it is actuarially supported and to ensure that the rates are not excessive, inadequate or unfairly discriminatory. Due to the complexity of workers' compensation insurance, the SCDOI's property and casualty actuary performs a comprehensive review and analysis of the filing and supporting data as well as industry statistics provided by NCCI. In determining whether to approve or disapprove a workers' compensation loss cost filing, the SCDOI considers applicable statutory standards and factors specified in Sections 38-73-10 and 38-73-430.

## B. Voluntary Loss Cost Multiplier

### 1. Individual Components of the Lost Cost Multiplier

The other component of workers' compensation rates is the loss cost multiplier (LCM). Individual insurance companies develop their own LCM. The LCM consists of several components that represent expenses to the insurance company over and above the loss costs, including:

- Commission and other acquisition expenses;

- General expenses;
- Taxes, licenses and fees;
- Profit;
- Guaranty fund assessment;[11]
- Residual market load (RML); and
- Loss cost modification factor.

The weight of these characteristics may vary from year to year depending on the insurer's book of business as reported on the insurer's Insurance Expense Exhibit (IEE). Discussed below are some of the components that impact an insurer's LCM.

The residual market load represents expenses incurred as a result of each voluntary insurer's mandatory participation in South Carolina's Insurance Plan. By statute, the rates of the Insurance Plan must be self-sustaining; premiums charged must cover all losses and expenses. To the extent that assigned risk rates are inadequate, the deficit is reinsured or made up by assessments on all voluntary market workers' compensation insurers in the state. An insurer's assessment–its portion of the deficit–is the residual market load, which is thereafter included in its loss cost multiplier and passed on to the employers insured in the voluntary market.

The loss cost modification factor component is developed by the insurer to adjust the loss costs if an individual insurer's experience indicates loss costs that are higher or lower than NCCI's approved loss costs. An insurer may have more specific and accurate underwriting, loss control, claims management, etc. that is not reflected in NCCI's composite data, and the SCDOI is compelled to consider this information to ensure the adequacy of workers' compensation insurance rates for that particular insurer.

**2. The SCDOI's Role in the Regulation of Lost Cost Multipliers**

In 2016, the South Carolina General Assembly amended Section 38-73-525 with a June 3, 2016 effective date. The revised law requires insurers to file LCMs with the SCDOI at least 60

[11] The guaranty fund assessment is an amount that insurance companies pay to cover the losses of insolvent workers' compensation insurers.

days in advance of using new rates. This law also requires that a credentialed actuary employed or retained by the SCDOI review all workers' compensation LCM filings. Since 2008, the SCDOI has reviewed all LCM filings for each individual carrier that wishes to write workers' compensation in the state. In determining whether to approve or disapprove a workers' compensation LCM filing, the SCDOI considers applicable statutory standards and factors specified in Sections 38-73-10 and 38-73-430.

Pursuant to these provisions, the SCDOI is also required to consider factors such as the past loss experience, the conflagration of catastrophe hazards, reasonable margin for underwriting profits and contingencies, dividends, savings, investment income, and all other relevant factors.

Because of the 2016 changes to the regulatory process brought about by Act No. 213, the SCDOI issued Bulletin 2016-02 which advised the industry of the changes and formally withdrew previous Bulletins 2007-13, 2007-13B, and 2009-18. In this bulletin, the SCDOI provided guidance on the procedural requirements related to workers' compensation LCM filings. Accurate and thorough data that clearly supports each individual element of the LCM must be included in each LCM filing in order for it to be approved by the SCDOI's actuary.

As a standard procedure, the SCDOI's staff works to identify trends and issues that commonly slow the filing review process and then find ways to mitigate them. For example, the SCDOI produces filing exhibits to serve as an additional tool to enhance speed to market. By providing active information and confronting problems before they develop, the SCDOI has been able to maintain an effective regulatory process for LCMs.

**C. Assigned Risk Loss Cost Multiplier**

NCCI administers South Carolina's Insurance Plan and submits data to the SCDOI supporting the assigned risk LCM. The SCDOI then sets the assigned risk rates and establishes a differential from the voluntary market to help maintain its stability. Any change in the assigned risk rate should be proportionate to the corresponding change in the voluntary market.

As with the voluntary market, the rates charged for policies in the residual market must comply with the statutory requirement that rates not be inadequate, excessive, or unfairly discriminatory. S.C. Code Ann. § 38-73-540(C) also requires that the residual market rates be self-sustaining (i.e., premiums charged must cover all losses and expenses). In the event of excessive losses in the residual market, NCCI will notify the SCDOI. After the SCDOI completes its review of the data, the Director issues a corrective order to amend the assigned risk LCM. By adjusting these rates as necessary, the SCDOI can ensure that the residual market will continue to operate on a self-sustaining basis.

## VI. Glossary

What follows is a list of terms used in this market status report as well as their associated meanings.

***Class Code*** — An individual job classification (e.g., roofer, barber, dental assistant, office worker, truck driver, etc.). South Carolina currently has 581 individual class codes.

***Experience Modification Factor*** — A factor used in determining rates and developed by NCCI, which compares an individual employer's loss experience by class code to the average experience of all insurers. Also called the experience rating factor.

***Guaranty Fund Assessment*** — An amount that insurance companies pay to cover the losses of insolvent workers' compensation insurers. The assessment is based on each insurer's market share in South Carolina and is capped at two percent of premium per year. All companies are assessed the same percentage by the guaranty fund, and companies are permitted, but not required, to pass this assessment on to policyholders. Self-insured funds and self-insured employers do not have guaranty fund protection in the event they are unable to pay claims and, accordingly, do not pay guaranty fund assessments.

***Indemnity Benefits*** — Monetary compensation due to loss or damage. Workers' compensation indemnity benefits compensate an employee for lost wages due to an on-the-job injury, accident or event that prevents him/her from returning to work (lost time, wage replacement costs).

***I-Site*** — Internet-State Interface Technology Enhancement – an online interface designed by the NAIC for state insurance departments to obtain comprehensive financial, market conduct, producer licensing, and securities information.

***Loss Costs*** — The losses, per $100 of payroll, an insurer expects to incur for medical, lost wage, and disability payments. Loss costs are developed by NCCI on behalf of all workers' compensation insurers.

***Loss Cost Modification Factor*** — A factor developed by insurers and used in developing the loss cost multiplier, which accounts for the deviation of an insurer's loss costs, based on the insurer's individual loss experience, from the approved loss costs to which the insurer will apply its loss cost multiplier. Also called the loss cost modifier.

***Loss Cost Multiplier (LCM)*** — A factor developed by workers' compensation insurers that accounts for underwriting expenses, such as commissions and brokerage expenses, other acquisition expenses, general expenses, second injury and guaranty fund assessments, taxes, licenses, and fees, and profit and contingencies. The loss cost multiplier includes any loss cost modification factor developed by the insurer.

***Loss Frequency*** — The number of claims occurring over a specific period of time.

***Loss Severity*** — The average amount of loss per claim, in dollars.

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| ***Medical Benefits*** | All necessary and reasonable medical treatment, prescriptions, and hospitalization services related to a work-related injury paid by an insurance carrier or directly by the employer if self-insured. |
| ***NAIC*** | National Association of Insurance Commissioners – The U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and the five other U.S. territories. |
| ***NCCI*** | National Council on Compensation Insurance – The nation's most experienced provider of workers' compensation information, tools, and services. It gathers data, analyzes industry trends, and prepares objective insurance rate and loss cost recommendations. NCCI is licensed by the SCDOI as a rating organization. |
| ***Premium*** | The amount paid by an employer to an insurer for workers' compensation insurance. [Premium = Loss Costs x Loss Cost Multiplier x (Payroll/ 100)] |
| ***Rate*** | The cost per unit of insurance. [Rate = Loss Costs x Loss Cost Multiplier] |
| ***Ratemaking*** | The process of calculating a premium so that it is not excessive, inadequate, or unfairly discriminatory. |
| ***Residual Market Load*** | A factor used in developing the loss cost multiplier that accounts for expenses associated with required participation in the residual market. |

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|---|---|
| ***Standard Premium*** | The type of premium that accounts for differences by class code. [Standard Premium = Manual Premium x Experience Modification Factor] |