

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
NINTH FLOOR STATE OFFICE BUILDING
333 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801
PHONE: (907) 465-2515 • FAX: (907) 465-3422
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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

IN THE MATTER OF)
Infinite Options Care Coordination Services, LLC)
Appellant.)
_____)

Case No. H 17-04

PROPOSED DECISION

Introduction

Infinite Options Care Coordination Services, LLC, (IOCCS) provides care coordination services for individuals eligible for Medicaid Waiver services. In September of 2015, IOCCS acquired a Workers' Compensation Insurance policy through Hale and Associates, Inc., with Alaska National Insurance Company (ANIC). IOCCS was originally placed into the National Council on Compensation Insurance (NCCI) code 8742 *Salespersons or Collectors - Outside*. As the result of site inspection of IOCCS offices in November of 2016, IOCCS was changed to NCCI code 8864 *Social Services Organization - All Employees & Salespersons, Drivers* for the plan year effective July 1, 2016. IOCCS appealed the classification adjustment under the NCCI *Basic Manual - 2001 Edition - Alaska, Appendix G - Dispute Resolution Process* before the Alaska Review and Advisory Committee's Workers' Compensation Grievance Committee (ARAC). On July 31, 2017, the ARAC upheld the determination that IOCCS is properly classified under NCCI classification code 8864. IOCCS appealed the ARAC's determination to

1 the Director of the Alaska Division of Insurance (Director) under AS 21.39.090 and the
2 Director appointed me as the Hearing Officer.

3 Pursuant to the Director's appointment, I hereby submit this proposed decision
4 affirming the ARAC's decision.

5 **Discussion**

6 **I. Issue**

7 The primary issue under appeal is the proper NCCI classification code for IOCCS under
8 its Alaska National Insurance Workers' Compensation policy (number 16GWW73938),
9 effective July 1, 2016.

10 **II. Background**

11 In its July 31, 2017, decision, the ARAC determined that the NCCI inspection report of
12 November 22, 2016, correctly reclassified IOCCS from NCCI classification code 8742 to 8864
13 and based its decision on the following findings:

- 14 • employees of IOCCS personally meet with clients and potential clients and these
15 meetings occasionally take place at the client's location;
- 16 • NCCI classification code 8864 includes case managers and employees who may, among
17 other services, counsel, advise, guide, direct, or instruct clients; and,
- 18 • the activities of IOCCS's employees were better described by NCCI classification code
19 8864 than 8742, because, while the employees do not offer the actual services, they do
20 direct and/or guide clients to the proper care givers.

21 IOCCS appealed the ARAC's decision to the Director on August 30, 2017.

22 **III. Facts and Proceedings**

23 The parties attended a prehearing conference on November 8, 2017, and agreed to
24 procedural issues, filing timelines and the February 21, 2018, hearing date. Both parties
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submitted prehearing briefs to outline their positions. Due to scheduling conflicts, the parties later agreed to delay the hearing date to April 26, 2018.

Ms. Megan Heim (business owner/member) represented IOCCS and Ms. Diane Vallentine (Attorney) represented ANIC during the hearing held on April 26, 2018, in Anchorage, Alaska. Ms. Heim was the sole witness for IOCCS, while Mr. Michael Craddock of NCCI and Carmen Reese of ANIC testified as witnesses for ANIC. Both parties filed prehearing briefs to outline their positions prior to the hearing. Ms. Victoria Dorsey, Attorney for NCCI, monitored the proceedings telephonically.

In her opening statement, Ms. Heim testified that ANIC and the ARAC did not understand the type of work performed by IOCCS's employees and, consequently applied the incorrect NCCI code to its operations. Ms. Heim testified that IOCCS employees are care coordinators and are not case managers who conduct client assessments; the work is primarily to provide information to Medicaid Waiver Services recipients to assist in the development of a "Plan of Care" for the client. Ms. Heim asserted that IOCCS's Care Coordinators do not perform case management work and that most of their work is performed in an office setting, rather than in a clinical setting with direct client contact and that they spend just 20 percent of their time in settings where they have face to face contact with clients.

In support of her position, Ms. Heim explained the history of care coordinators and how rules established by the Centers for Medicare and Medicaid Services (CMS) prohibited care coordinators from working for providing agencies. Unlike in the past, these new rules restricted care coordinators from soliciting clients or choosing service agencies for their clients. Ms. Heim stated that CMS established the title, Complex Pre-care Coordinator, to reflect this policy change. Ms. Heim testified that she started IOCCS as a result of these policy changes and that without care coordinators, services needed by individuals would not be accurately requested.

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Ms. Heim stated that when she obtained liability and Workers' Compensation insurance, IOCCS was placed in NCCI Class Code 8742, *Salespersons or Collectors - Outside*, and this code was used for the first year of operations. Ms. Heim relayed that about six months into the second year, she received a bill for approximately \$20,000 and a notice from ANIC that the code needed to be changed to 8864, *Social Service Organization – All Employees and Salespersons and Drivers*.

Ms. Heim said that, at the recommendation of her insurance broker, she asked NCCI to do an onsite inspection to determine the appropriate Class Code, but contended the NCCI audit process did not provide enough time to adequately collect the details about the work activities actually performed by IOCCS. Ms. Heim also asserted that NCCI code 8842 for disability direct support workers has a lower rate, while the risks are higher, but did not argue that this code would have been more accurate. Ms. Heim's argued that NCCI did not have a code that accurately represented the work performed by IOCCS and that it was unfair to apply NCCI code 8864, due to its high risk/premium rate. Ms. Heim suggested that NCCI and ANIC should establish a code that more closely fits with care coordination services risks.

Under Ms. Vallentine's cross examination, Ms. Heim acknowledged that IOCCS is required to develop a plan of care and maintain contact with clients at least twice per month to discuss and monitor service delivery and quality of care and that one of those monthly meetings must be in person. Ms. Heim clarified that, while actual service delivery is not coordinated by IOCCS, its Care Coordinators connect individuals to service agencies and assist individuals to maintain Medicaid and Medicaid Waiver program eligibility by coordinating renewal notices and documentation between Medicaid and the individual and through meeting level of care requirements by coordinating diagnosis and assessment documentation between the medical provider and the State of Alaska. In response to questions from Ms. Vallentine, Ms. Heim

1 stated that IOCCS employees do not perform sales, she was not contending that IOCCS should
2 be in NCCI code 8842 and that she did not have enough familiarity with classification codes to
3 suggest a more appropriate alternative.

4 Ms. Vallentine opted to forgo an opening statement and called Michael Craddock of
5 NCCI as a witness for ANIC. Mr. Craddock testified that he acted in the capacity of recording
6 secretary for the ARAC in the IOCCS hearing at issue and that he has used the NCCI Basic
7 Manual in his Workers' Compensation career over the last 16 years. Mr. Craddock stated that
8 the Basic Manual establishes that a business, rather than an individual occupation, shall be
9 classified according to the Scopes Manual. Mr. Craddock confirmed that the business needn't
10 have or be covered by all of the descriptions for a particular code in order to be properly placed
11 in that code and that NCCI conducted a classification inspection of IOCCS and determined that
12 code 8864 was the most appropriate code.

13 On cross examination of Mr. Craddock, Ms. Heim asked how long an inspection audit
14 should take and suggested that the inspection was inadequate because it only took 30 minutes.
15 Mr. Craddock stated that inspections are based on the complexity of a policyholder's
16 operations, so it varies.

17 Ms. Carmen Reese, Audit Manager for ANIC, testified that she has performed Workers'
18 Compensation audit work for 25 years and that she currently reviews all of the physical audits
19 for ANIC. Ms. Reese stated that she uses the NCCI Scopes Manual to determine business
20 classification and that she reviewed the IOCCS audit and determined, "...that code 8864 does
21 apply. The code description refers to the resource and referral specialists, case managers who
22 coordinate services of organizations to benefit an individual and family and that is exactly what
23 we believe Infinite Options does."
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1 On cross examination, Ms. Reese said that ANIC does not create class codes and that
2 NCCI maintains authority to establish the codes and has its own process for establishing a new
3 code. Ms. Reese confirmed that ANIC is mandated to follow NCCI rules and is audited for
4 compliance with the Basic Manual and the Scopes Manual.

5 Ms. Heim opted not to make a closing statement, but reiterated her position that ANIC
6 doesn't really understand IOCCS's business operations and that NCCI should establish a new
7 class code for care formation services.

8 Ms. Vallentine argued in her closing that IOCCS is bound by standards set in 7 Alaska
9 Administrative Code 130.240, which include

- 10 • keeping in contact with a recipient or their representative at least twice monthly;
- 11 • developing a plan of care;
- 12 • meeting with the recipient at least quarterly to monitor service delivery;
- 13 • monitoring quality of care;
- 14 • evaluating the need for specific home and community-related waiver services;
- 15 • reviewing and revising the plan of care;
- 16 • coordinating multiple services and providers; and,
- 17 • assisting the recipient to apply for reassessment.

18 Ms. Vallentine continued that the Basic Manual provides that the classification code is
19 assigned to a business based on the best fit for all of its various job duties, occupations and
20 operations; the classification is not based on individual employee duties and a business does not
21 need to perform all operations within a classification in order to fit within its terms. In closing,
22 Ms. Vallentine argued that class code 8864, which includes, "resource and referral specialist,
23 case managers who coordinate services of organizations to benefit an individual or family,"
24 best describes IOCCS's operations and that the standard exception under class code 8742 could
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1 not be applied to IOCCS for this category of work, because class code 8864 expressly includes
2 all salespersons.

3 **IV. Applicable Law, Regulation and Policy**

4 AS 23.30.045 requires an employer to provide for workers' compensation payments to
5 its employees. AS 23.30.075 requires an employer, unless exempted, to either maintain
6 insurance to cover employer's liability for workers' compensation payments or to furnish
7 satisfactory proof to the Alaska Division of Workers' Compensation, of the employer's ability
8 to pay workers' compensation liabilities directly.

9 Workers' compensation insurance rates, manuals, and rating rules are proposed by the
10 NCCI and approved by the Director under AS 21.39.040. The NCCI is a licensed insurance
11 rating organization approved by the Director under AS 21.39.060. AS 21.39.090 requires a
12 rating organization to provide a reasonable means in Alaska for a person aggrieved by the
13 rating system to be heard and allows the person to appeal a determination to the Director. 3
14 AAC 30.200 establishes the ARAC, which provides the initial review process for people
15 aggrieved by the rating organization's rating system. AS 21.06.170- 21.06.240 contain the
16 principal statutory rules for Division of Insurance hearings.

17
18 7 AAC 130.240 provides the Alaska Department of Health and Social Services rules for
19 operations and payment for care coordination services.

20 NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance -*
21 *2001 Edition* (Basic Manual) sets out rules for classification assignment.

22 **Rule 1(A):**

23 "1. The purpose of the classification system is to group employers with similar
24 operations into classifications so that:

- 25 • The assigned classification reflects the exposures common to those
employers
- 26 • The rate charged reflects the exposure to loss common to those employers

1 2. Subject to certain exceptions, it is the business of the employer within a state that is
2 classified, not separate employments, occupations or operations within the business."

3 Rule 1(B)(2)(c)(3):

4 "Code 8742 does not apply when the basic classification wording includes outside
5 salespersons and/or collectors."

6 Rule 1(D):

7 "The purpose of the classification procedure is to assign the one basic classification that
8 best describes the business of the employer within a state. Subject to certain exceptions
9 described in this rule, each classification includes all the various types of labor found in
10 a business... It is the business that is classified, not the individual employments,
11 occupations or operations within the business."

12 Rule 1(D)(4):

13 "Standard Exceptions must be separately classified unless specifically included in a
14 classification assigned to the business."

15 Appendix G of the NCCI *Basic Manual – 2001 Edition – Alaska* provides rules for
16 dispute resolution processes through the ARAC.

17 NCCI's *Scopes of Basic Manual Classifications, posted March 1, 2014* (Scopes
18 Manual), as filed with and approved by the Alaska Division of Insurance provides the
19 following definitions for class codes 8742 and 8864:

20 **Code 8742 – Salespersons or Collectors – Outside**

21 Code 8742 is applied to outside salespersons or collectors. Since these employees are
22 common to many businesses, they are considered to be Standard Exceptions. As such,
23 they are classified to Code 8742, unless the classification applicable to their
24 employment includes salespersons. Under the latter circumstance the outside
25 salespersons or collectors are assigned to the classification that includes salespersons,
26 not Code 8742.

Salespersons or collectors as defined in the Basic Manual are employees engaged in
such duties away from the employer's premises. Code 8742 is not available for
employees who deliver merchandise. These employees are assigned to the driver's
classification applicable to the risk even though these employees may also collect or
sell. If they deliver merchandise by walking or using public transportation, they are
assigned to the governing classification. Judgment is necessary in assessing these
employees' duties for classification purposes since occasional courtesy deliveries of a

1 nominal quantity of merchandise would not preclude them from being classified to
2 Code 8742.

3 **Code 8864 – Social Services Organization – All employees & Salespersons, Drivers**

4 Code 8864 applies to institutions that provide charitable, welfare, or social services to
5 mentally, physically, or emotionally challenged persons, troubled youth, children in
6 crisis, abused persons, persons with financial and employment hardships, and
7 individuals perform drug- or alcohol- related community service. Charitable, welfare, or
8 social service organizations may offer these individuals meals, on site counseling, case
9 management or client assessments, education, vocational training, and employment.
10 Risks classified to Code 8864 may offer limited medical services such as first aid but
11 not significant medical treatment typically found in hospitals.

12 Employees assigned to Code 8864 include but are not limited to counselors; resource
13 and referral specialists; case managers who coordinate services of organizations to
14 benefit an individual or family; volunteer coordinators; outside welfare workers;
15 classroom teachers who teach or demonstrate in a classroom environment; cooks;
16 drivers; housekeepers; laundry, security, and maintenance personnel; and medical
17 professionals such as physicians and nurses.

18 **Conclusion**

19 **I. THE CORRECT CLASSIFICATION CODE FOR IOCCS IS 8864 – SOCIAL SERVICES
20 ORGANIZATION – ALL EMPLOYEES AND SALESPERSONS, DRIVERS.**

21 Based on testimony provided by Ms. Heim, Mr. Craddock and Ms. Reese during the hearing,
22 the NCCI Inspection & Classification Report completed in 2016 provided an accurate
23 description of the services provided by IOCCS. Given this consensus, I do not find Ms. Heim's
24 assertion that ANIC does not understand the type of work performed by IOCCS to be valid.
25 However, I can understand how the phrase "applies to institutions," as listed under the NCCI
26 Scopes Manual for classification code 8864 and the intent to classify IOCCS under code 8864
could be interpreted by Ms. Heim to reflect a misunderstanding of the type of work performed.
After all, no evidence presented during the course of the hearing indicates that IOCCS provides
institutional social services to mentally, physically or emotionally challenged persons.

Rule 1(D) of the Basic Manual recognizes that classification codes do not always
provide a perfect match to describe an insured's operations. In circumstances where there is not

1 a perfect match, the rule requires that the classification that best fits the business's operations is
2 used. It is also noteworthy that this rule requires classification of the overall business rather
3 than individual employees.

4 While there may be regulatory limitations on an institution that provides social services
5 to mentally, physically or emotionally challenged persons, that, as alluded to by Ms. Heim in
6 her testimony, may prohibit performance of the type of assessments and coordination services
7 conducted by IOCCS, the general type of services ("to counsel, advise, guide, direct, or instruct
8 clients") are consistent with code 8864. Ms. Heim testified that, prior to the Centers for
9 Medicare and Medicaid Services establishing a national rule prohibiting the practice, care
10 coordinators had historically worked within an institution that provides social services. In the
11 circumstance where care coordination functions were performed by employees of the service
12 provider institution, the activities would fall unmistakably within the terms of code 8864.

13 Class code 8742 was initially assigned to IOCCS, but no evidence suggested that
14 IOCCS Care Coordinators performed sales or demonstrations of products being sold;
15 accompanied clients as escorts or dates on social outings; or performed meter reading services
16 for a utility. Further, the evidence reflects that the majority of work performed by IOCCS's
17 Care Coordinators occurred at the employer's premises and Ms. Heim testified that they do not
18 employed to perform sales work. Under the circumstances, I find that code 8742 does not best
19 describe IOCCS's business operations.
20

21 No evidence was presented to illustrate the existence of another NCCI classification
22 code that more closely matched IOCCS's operations than code 8864. Based on testimony from
23 Michael Craddock and Carmen Reese, who both have extensive experience with NCCI
24 classification codes, code 8864 best describes IOCCS's operations.
25
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1 II. THE HEARING PROCESS (UNDER AS 21.06.170 – 21.06.230) IS NOT THE
2 APPROPRIATE VENUE TO ESTABLISH A NEW NCCI CLASSIFICATION CODE FOR
3 CARE COORDINATION SERVICES ORGANIZATIONS.

4 NCCI has an ongoing process dedicated to ensuring that its classification system is
5 responsive to stakeholders. NCCI's analysis is national in scope and establishing a new
6 classification requires consideration of the following criteria¹:

- 7 • There must be a large enough group of employers to support a statistically credible
8 rate.
- 9 • The businesses under the code must be readily identifiable.
- 10 • Businesses within the group must have similar operations from on business to the
11 next, resulting in similar exposures to hazards. The businesses must be
12 "homogeneous."

13 Correctly assigning a classification code to an employer is extremely important. If an
14 employer is assigned an incorrect code that reflects less risk than common for that type of
15 business operation, then the employer will pay inadequate premium in relation to the risk. If an
16 employer is assigned an incorrect code that reflects more risk than common for that type of
17 business operation, then the employer will pay too much premium. Employer stakeholder
18 organizations are encouraged to communicate with NCCI regarding systemic issues with its
19 rating classification system.

20 III. HOLDING

21 I find


- 22 • The correct NCCI classification code for IOCCS is 8864 – *Social Services Organization*
23 – *All Employees & Salespersons, Drivers.*

24 Therefore, I uphold the ARAC's decision in this case.

25 ¹ See NCCI's Lesson 1 – Introduction to Classification at
26 https://www.google.com/search?rlz=com.microsoft%3Aen-US%3AIE-Address&ei=LUZW6v_GdLw9AOr9LrIBO&q=How+docs+a+new+NCCI+Code+get+established%3F&og=How+does+a+new+NCCI+Code+get+established%3F&gs_l=psy-nb_3...14798.27763.0.28037.69.46.2.2.2.0.176.4341.20j22.42.0...0...lc.1.64.psy-nb...28.37.3540...0j33i21k1j33i160k1j0i67k1j0i131k1j0i3k1j0i22i30k1j33i22i29i30k1.0.HBibqwLtiPs

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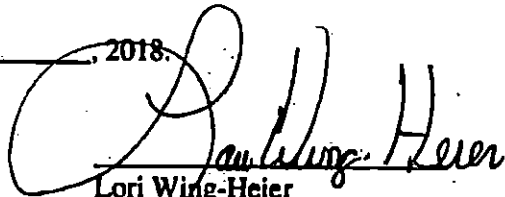
1 Dated this 8th day of June, 2018.


Grey Mitchell
Hearing Officer

4 **Adoption**

5 The undersigned director of the Division of Insurance adopts this Proposed
6 Decision in Case No. H 17-04 as the final administrative determination in this matter. Pursuant
7 to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision
8 within 30 days. See the attached Notice of Final Order and Appeal Rights.

8 DATED this 11th day of June, 2018.


Lori Wing-Heier
Director

13 **Non-Adoption Options**

14 1. The undersigned director of the Division of Insurance declines to adopt this Proposed
15 Decision in Case No. H 17-04 and instead orders that the case be returned to the hearing officer
16 to

16 take additional evidence about: _____

17 make additional findings about: _____

18 conduct the following specific proceedings: _____

20 DATED this _____ day of _____, 2018.

22 _____
Lori Wing-Heier
Director

24 2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case
25 No. H 18-04 as follows: _____

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Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this _____ day of _____, 2018.

Lori Wing-Heier
Director

I hereby certify that on the 12th day of June, 2018, I emailed and mailed copies of this document to the following parties:

Victoria.Dorsey@ncci.com
Victoria N. Dorsey, Esq.
Managing Attorney
NCCI Holdings, Inc.
901 Peninsula Corporate Circle
Boca Raton, FL 33487-1362

mheim.infiniteoptions@yahoo.com
Meghan Heim
Infinite Options Care Coordination Services, LLC
529 6th Avenue
Fairbanks, AK 99701

dvallentine@jdolaw.com
Diane F. Vallentine
Attorney
Jermain, Dunnagan & Owens, P.C.
3000 A Street, Suite 300
Anchorage, AK 99503


Suzy Bethel
Office Assistant I

**NOTICE OF FINAL ORDER
AND APPEAL RIGHTS
Case H 17-04**

The enclosed order signed by the Director of the Division of Insurance is the final order in this action.

Pursuant to AS 21.39.170(c), and the Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days.

AS 21.39.170(c) provides:

An order or decision of the director is subject to review by appeal to the superior court at the instance of a party in interest. The court shall determine whether the filing of the appeal will operate as a stay of an order or decision of the director. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the director in whole or in part.

Alaska Appellate Rule 602(a)(2) provides:

An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under agency regulations, whichever is earlier. The 30 day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal.

For other applicable rules of court, see Alaska Appellate Rules 601-612.