THE WORKERS' COMPENSATION
RATING AND INSPECTION BUREAU

April 29, 2003

CIRCULAR LETTER NO. 1920

To All Members and Subscribers of the Bureau:

REQUIREMENTS APPLICABLE TO WORKERS' COMPENSATION DEDUCTIBLE POLICIES

On April 25, 2003 the Division of Insurance published a new regulation regarding the requirements applicable to Workers' Compensation deductible policies. Regulation 211 CMR 115.00, Requirements Applicable to Workers' Compensation Deductible Policies is effective May 1, 2003. Attached is a copy of the recently published regulation. Also attached is an example of Approvable Rating Formula for Workers' Compensation Larger Deductible Policies Pursuant to 211 CMR 115, which was issued by the Commonwealth of Massachusetts Office of Consumer Affairs and Business Regulation, Division Of Insurance in conjunction with the new regulation.

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CODE OF MASSACHUSETTS REGULATIONS
211 CMR. -- DIVISION OF INSURANCE
211 CMR 115.00 -- REQUIREMENTS APPLICABLE TO WORKERS' COMPENSATION DEDUCTIBLE POLICIES

211 CMR 115.01 Purpose and scope

The purpose of 211 CMR 115.00 is to regulate the conditions under which insurers may provide workers' compensation insurance coverage to employers in Massachusetts under large deductible policies and to provide for the administration and implementation of such regulation. All workers' compensation deductible policies shall conform to the conditions and limitations set forth below and to the conditions and limitations set forth in 211 CMR 113.00.

Authority.-- 211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A, 55, 55A; c. 175, §§ 3A, 4, 5 and 6; c. 176D.

211 CMR 115.02 Authority

211 CMR 115.00 is promulgated in accordance with the authority granted by M.G.L. c. 152, §§ 25A, 53A, 55, 55A, and by M.G.L. c. 175, §§ 3A, 4, 5 and 6, and by the authority granted generally by M.G.L. c. 152, c. 175, and c. 176D.

Authority.-- 211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A, 55, 55A; c. 175, §§ 3A, 4, 5 and 6; c. 176D.

211 CMR 115.03 Definitions

As used in 211 CMR 115.00 the following words shall have the meanings indicated.

ARAP means any premium produced by the All Risk Adjustment Program or any similar worker’s compensation rating program approved by the Commissioner.

Commissioner means the Commissioner of Insurance or his or her designee.

Insureds means employers who have contracted with a licensed insurance company, reciprocal or interinsurance exchange for the payment of the compensation required under the provisions of M.G.L. c. 152.

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Authority.-- 211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A, 55, 55A; c. 175, §§ 3A, 4, 5 and 6; c. 176D.

211 CMR 115.04 (Reserved)

211 CMR 115.05 Minimum requirements for deductible policies

(1) The first dollar loss and expense experience resulting from all deductible policies shall be reported by the insurer for all statistical purposes.

(2) The following rules must be adhered to in all large deductible policies and plans:

(a) Only those Massachusetts insureds whose workers' compensation full coverage standard premium plus ARAP would otherwise exceed $375,000 of Massachusetts premium are eligible, provided, however, that insureds with either (i) at least $50,000 of annual non-Massachusetts workers' compensation premium or (ii) at least $10,000 of annual non-Massachusetts workers' compensation premium and payroll in at least two states other than Massachusetts, need have only $100,000 or more in countrywide workers' compensation premium to be eligible to be written on large deductible plans. Premium determinations for this purpose shall not include self-insurance "premium."

(b) The policies may not provide cancellation provisions that differ in any respect from those contained in the standard Massachusetts workers' compensation policy.

(c) A reasonable aggregate deductible limit must be included. For insureds having less than $500,000 in countrywide worker's compensation premium, such aggregate limit may not exceed three times standard premium.

(d) The per claim deductible shall be at least $75,000.

(e) Policy forms, rates, and deductible endorsements must be filed with and approved by the Division of Insurance before use. Rates must be convertible to approved retrospectively rated programs, using the most recently approved parameters, in a manner acceptable to the Division. The Division shall make available to companies an example of an approvable rate structure on or before May 1, 2003.

Authority.-- 211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A, 55, 55A; c. 175, §§ 3A, 4, 5 and 6; c. 176D.

211 CMR 115.06 Failure to comply

Failure to comply with 211 CMR 115.000 is a violation of Massachusetts law and, in addition to any other applicable penalties, may result in the withdrawal of permission to write any new or renewal deductible policies. Companies or company groups that have forfeited the right to write deductible policies may apply to the Commissioner for eligibility to write such policies no sooner than two years from the date of withdrawal of permission.

Authority.-- 211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A, 55, 55A; c. 175, §§ 3A, 4, 5 and 6; c. 176D.

211 CMR 115.07 Effective date

The provisions 211 CMR 115.00 shall be effective as of May 1, 2003.

Authority.-- 211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A, 55, 55A; c. 175, §§ 3A, 4, 5 and 6; c. 176D.

211 CMR 115.08 Severability

If any section or portion of a section of 211 CMR 115.00 or the applicability thereof to any person, entity or circumstance is held invalid by a court, the remainder of 211 CMR 115.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

Authority.-- 211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A, 55, 55A; c. 175, §§ 3A, 4, 5 and 6; c. 176D.

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Example of Approvable Rating Formula for Workers' Compensation Large Deductible Policies Pursuant to 211 CMR 115

Parameters

Per Claim Deductible. The per claim loss, and allocated loss adjustment expense (ALAE) amount, if elected, that will be paid by the insured. This amount is agreed upon by insurer and insured and is subject to the minimum amount listed in 211 CMR 115.05(2)(d).

Aggregate Deductible. The aggregate loss, and ALAE amount, if elected, that will be paid by the insured. This amount is agreed upon by insurer and insured and is subject to the maximum amount listed in 211 CMR 115.05(2)(c).

Formulas

$$\text{Deductible Premium} = \left\{ \text{Per Claim Deductible Charge} + \text{Aggregate Deductible Charge} + \text{Expense Provision} + \text{Residual Market Provision} \right\} \text{X} \ \text{Adjusted Tax Multiplier} + \text{Deductible Based Taxes}$$

$$\text{Deductible Credit} = 1 - \text{Deductible Premium} \ / \ \text{Standard Premium}$$

Values

Per Claim Deductible Charge. This is the premium charge associated with the portion of losses and ALAE, if subject to the deductible, expected above the per claim deductible amount. It is equal to the excess loss factor, or excess loss and allocated expense factor, if ALAE is subject to the deductible, associated with the agreed upon per claim deductible amount, as found on the current approved Retrospective Rating Plan Manual Massachusetts Special Rating Values pages times the standard premium.

Aggregate Deductible Charge. This is the premium charge associated with the portion of losses and ALAE, if subject to the deductible, expected above the aggregate deductible amount. It is equal to the insurance charge for the entry ratio associated with the selected aggregate deductible amount, found in the state approved Retrospective Rating Plan, times the expected limited losses and ALAE, if subject to the deductible. The expected limited losses are equal to standard premium times the difference between the expected loss ratio and the excess loss factor, associated with the per claim deductible amount, found on the current approved Retrospective Rating Plan Manual Massachusetts Special Rating Values pages, or standard premium times the difference between the expected loss and allocated expense ratio and the excess loss and allocated expense factor, if ALAE is subject to the deductible, as shown below.

$$\text{Aggregate Deductible Charge} = \text{Standard Premium} \times \text{Insurance Charge} + \left\{ \text{Expected Loss Ratio} - \text{Excess Loss Factor} \right\}$$

The entry ratio is calculated by dividing the aggregate deductible amount by the product of standard premium and the expected loss ratio, or expected loss and allocated expense ratio, if ALAE is subject to the deductible, found on the current approved Retrospective Rating Plan Manual Massachusetts Special Rating Values pages. If no aggregate deductible applies, the aggregate deductible charge should be set equal to zero.

Expense Provision. This is the premium charge that covers expenses, profit and contingencies associated with the large deductible policy. The expense provision is equal to the standard premium times the expense factor found in the Table of Expense Ratios – Excluding Taxes and Including Profit and Contingencies table in the state approved Retrospective Rating Plan. If ALAE is subject to the deductible, the expense ratio found on the Table of expense Ratios – Excluding Allocated Loss Adjustment Expense and Taxes and Including Profit and Contingencies should be referenced instead.

Residual Market Provision. This is the premium charge that covers the residual market subsidy, which is applicable to full coverage premium for large deductible policies. The residual market provision is equal to the residual market subsidy provision shown on the current approved Retrospective Rating Plan Manual Massachusetts Special Rating Values pages times standard premium.

Adjusted Tax Multiplier. The adjusted tax multiplier is applied in order to cover taxes associated with the large deductible policy. Since the residual market subsidy is separately accounted for in the calculation, the tax multiplier found on the current approved Retrospective Rating Plan Manual Massachusetts Special Rating Values pages must be adjusted to remove the assigned risk subsidy before being applied. The following formula is used to calculate the adjusted tax multiplier.

$$\text{Adjusted Tax Multiplier} = 1 \; / \; \left\{ 1 \; / \; \text{Tax Multiplier} + \text{Residual Market Subsidy} \right\}$$

Deductible Based Taxes. This is the premium charge for any premium taxes on the losses (and ALAE, if subject to the deductible) reimbursed or paid under the deductible plan.[1] The charge is equal to the insured paid or reimbursed losses and ALAE times one minus the inverse of the adjusted tax multiplier.

$$\text{Deductible Based Taxes} = \text{Insured Paid Losses} \; X \; \left\{ 1 - 1 \; / \; \text{Adjusted Tax Multiplier} \right\}$$

If the insurer does not include deductible losses or reimbursements in the calculation of its premium taxes,[1] the charge for deductible based taxes should be set equal to zero.

Standard Premium. The standard premium referred to in the large deductible calculations includes any All Risk Adjustment Program (ARAP) Surcharge.

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[1] Please contact the Department of Revenue with any questions regarding tax liabilities.