

211 CMR: DIVISION OF INSURANCE

211 CMR 115.00: REQUIREMENTS APPLICABLE TO WORKERS' COMPENSATION INSURANCE DEDUCTIBLE PLANS

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115.01: Purpose and Scope

The purpose of 211 CMR 115.00 is to regulate the conditions under which Insurers offer workers' compensation insurance deductible plans in the Commonwealth.

115.02: Definitions

As used in 211 CMR 115.00 the following words shall mean:

ARAP. Any premium produced by the All Risk Adjustment Program as defined in the Massachusetts Exceptions to the Experience Rating Plan Manual for Workers' Compensation and Employers' Liability Insurance published by the National Council of Compensation Insurers, or any similar workers' compensation rating program approved by the Commissioner.

Commissioner. The Commissioner of Insurance appointed pursuant to M.G.L. c. 6, § 26, or his or her designee.

Deductibles. That portion of paid workers' compensation benefits and associated expenses for which the Insured is liable to reimburse the Insurer under the terms of the policy. Deductibles shall apply to both indemnity and medical costs.

Division. The Division of Insurance created pursuant to M.G.L. c. 26, § 1

Insured. An employer who has contracted with an Insurer for the payment of the compensation required under the provisions of M.G.L. c. 152.

Insurer. Any insurance company, reciprocal, self-insurance group, or interinsurance exchange authorized by the Division to pay the compensation provided for by M.G. L. c. 152, which has contracted with an Insured to pay such compensation. Insurer shall not include self-insurers licensed by the Department of Industrial Accidents pursuant to M.G.L. c. 152, § 25A, self-insurance groups established pursuant to the provisions of M.G. L. c. 152, § 25E through 25U or entities only contracting to pay workers' compensation insurance in excess of compensation that will be paid to the Insured by another, primary Insurer or self-insurer.

Large Deductible Plan. A workers' compensation policy with a per claim or per occurrence deductible of no less than \$75,000.

LRARO. The Large Risk Alternative Rating Option as defined in the Massachusetts Exceptions to Part One of the Retrospective Rating Plan Manual for Workers' Compensation and Employers' Liability Insurance published by the National Council of Compensation Insurers, or any similar workers' compensation rating program approved by the Commissioner.

Medium-sized Deductible Plan. A workers' compensation policy with a per claim deductible of \$2,000, \$2,500, or \$5,000.

Optional Deductible Plan. A Medium-sized Deductible plan with a \$5,000 per claim deductible or a Large Deductible Plan.

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Pool. The workers' compensation residual market pool identified in M.G.L. c. 152, § 65C.

Rating Bureau. The Workers' Compensation Rating and Inspection Bureau of Massachusetts, or any successor entity licensed by the Commissioner as a rating organization pursuant to M.G.L. c. 152, § 52C.

Small Deductible Plan. A workers' compensation policy with a per claim deductible of \$500 or \$1,000. Such Small Deductible Plan shall constitute a "reasonable small deductible" as set forth in M.G.L. c. 152, § 25A(4)(a).

Wrap-up. A construction, erection or demolition project for which workers' compensation policies have been issued by one or more Insurers under the same management to insure two or more legal entities engaged in such a project, in which the entities insured are limited to the general contractor and subcontractors performing work under one or more contracts. Such projects shall be confined to operations at a single location, unless they involve roadways, tunnels, waterways or surface or underground conduits. Further, such projects shall be of definite duration and involve work to be performed continuously to completion.

115.03: Requirements Applicable to All Workers' Compensation Deductible Plans

(1) 211 CMR 115.03(1)(a) through (h) shall be adhered to in all workers' compensation deductible plans:

(a) All policy forms and rates related to an Insurer's workers' compensation deductible plan shall be filed with and approved by the Division prior to use in the Commonwealth as required by law.

(b) The Insurer shall pay all benefits required under the provisions of M.G.L. c. 152 directly to the appropriate party. Subsequent to Insurer payment of any amount which falls within the deductible limit(s), the Insurer shall seek reimbursement from the Insured. Failure of the Insured to make complete reimbursement for deductibles within 30 days of receipt of a bill from the Insurer shall constitute for purposes of M.G.L. c. 152, § 55A, non-payment of premium and be grounds for termination of the workers' compensation policy.

(c) The first dollar loss and expense experience resulting from all workers' compensation deductible plans shall be reported by the Insurer for all statistical purposes.

(d) Except as contained in 211 CMR 115.03(1), the workers' compensation deductible plans may not provide cancellation provisions that differ in any respect from those contained in the standard Massachusetts workers' compensation policy.

(e) Retrospectively rated workers' compensation policies, including any policy written pursuant to the LRARO, shall not include any provision for deductibles or be combined in any way with a workers' compensation deductible plan; provided, however, that the expense portion of net premium after the application of a deductible credit on a large deductible policy may be retrospectively adjusted to reflect all and only legitimate expenses of the policy; and provided further, that such expenses of the policy are borne by the insurer and reflected in the premium for the policy pursuant to the rating formula promulgated by the Commissioner. No portion of the rate other than the expense component may be retrospectively adjusted in any manner for a Large Deductible Plan. No retrospective premium payment shall be deemed to be a reimbursement of deductibles for any purpose.

(f) The entire cost of all claims under a workers' compensation deductible plan relative to a particular Insured shall be included in the experience data used to determine the experience modification of that Insured, regardless of the requirement that reimbursement shall be made for the deductible amount of any claim.

(g) All Small or Medium-sized Workers' Compensation Deductible Plans shall require per-claim deductible amounts as defined in 211 CMR 115.02, and all Large Workers' Compensation Deductible Plans shall require a per claim or per occurrence deductible of at least the minimum value defined in 211 CMR 115.02. No other Workers' Compensation deductible plans shall be permitted.

(h) Large Deductible Plans may be offered only in connection with policies not written through the Pool.

(2) Any Insurer offering an Optional Deductible Plan, including the Pool, may require reasonable collateral from its Insureds.

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115.04: Requirements Applicable to Small and Medium-sized Deductible Plans

- (1) Insurers and the Pool must offer all Insureds deductible plans, as optional endorsements to each workers' compensation policy issued, providing for per-claim deductibles of \$500, \$1,000, \$2,000, and \$2,500, as well as an alternative aggregate deductible plan providing for a per-claim deductible of \$2,500 combined with a \$10,000 aggregate deductible or an aggregate deductible equal to 5% of the basis for determining the aggregate deductible limit, whichever is greater.
- (2) Insurers and the Pool may offer Optional Deductible Plans involving per-claim deductibles of \$5,000.
- (3) The Rating Bureau shall file with the Division at least once every two years, or at any other time requested by the Commissioner, the premium credits associated with Small and Medium-sized Deductible Plans. Such filings shall be subject to approval by the Commissioner.

115.05: Requirements Applicable to Large Deductible Plans

- (1) Large Deductible Plans may be offered only to Insureds whose Massachusetts workers' compensation full coverage standard premium plus ARAP would otherwise exceed \$375,000. Insureds with either:
 - (a) at least \$50,000 of annual non-Massachusetts workers' compensation premium; or
 - (b) at least \$10,000 of annual non-Massachusetts workers' compensation premium and payroll in at least two states other than Massachusetts, only need \$100,000 or more in countrywide workers' compensation premium to be eligible to be written on Large Deductible Plans. Premium determinations for eligibility to offer Large Deductible Plans shall not include self-insurance "premium".
- (2) All Large Deductible Plans shall include a reasonable aggregate deductible limit. For Insureds having less than \$500,000 in countrywide workers' compensation premium, such reasonable aggregate deductible limit may not exceed three times standard premium.
- (3) Rates for Large Deductible Plans shall 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 Insurers an example of an approvable rate structure.
- (4) All Large Deductible Plans or LRARO products offered, written or renewed in the Commonwealth shall comply with 211 CMR 115.00.
- (5) For Large Deductible Plans on projects, the premium size requirements set forth in 211 CMR 115.05 may be met by summing the standard premium of the individual contractors within a Wrap-up.

115.06: Penalties

- (1) Failure to comply with 211 CMR 115.00 may result in the withdrawal of the Division's approval of an Insurer's workers' compensation deductible plan or plans.
- (2) The Rating Bureau shall monitor its member companies' compliance with 211 CMR 115.00, by providing, every September, a report to the Division listing large deductible policies for the prior five years whose unit statistical reports indicate that no aggregate deductible was applicable or whose indicated aggregate deductible exceeds \$10,000,000.
- (3) The Division may refer information related to any Large Deductible Plan written in violation of 211 CMR 115.00 to the Massachusetts Department of Revenue, along with an estimate of the policy premium absent any deductible credit, for appropriate action.

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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.

REGULATORY AUTHORITY

211 CMR 115.00: M.G.L. c. 152, §§ 25A, 53A and 55.