Christina's Copy

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS
DIVISION OF INSURANCE
280 FRIEND STREET, BOSTON, 02114
(617) 727-7189

GLORIA C. LARSON
SECRETARY

KAY DOUGHTY
COMMISSIONER

June 16, 1992

DIVISION OF INSURANCE BULLETIN 92-01

TO: ALL COMPANIES LICENSED TO WRITE WORKERS' COMPENSATION INSURANCE IN THE COMMONWEALTH OF MASSACHUSETTS

FROM: KAY DOUGHTY, COMMISSIONER OF INSURANCE

RE: WORKERS' COMPENSATION LARGE DEDUCTIBLE PROGRAMS IN MASSACHUSETTS

A number of insurers have filed workers' compensation large deductible programs in Massachusetts since October of 1990. Many issues have arisen relating to the parameters of those programs. This bulletin is provided to clarify those issues.

All workers' compensation large deductible programs utilized by insurers in Massachusetts must be in conformity with the conditions and limitations set forth below.

The total premium amount in force at any time under a workers' compensation large deductible program cannot exceed the highest of the following values:

1. 25% of the insurance company group's 1990 Massachusetts workers' compensation voluntary written premium;

2. 25% of the insurance company group's 1991 Massachusetts workers' compensation voluntary written premium; or

3. $3.5 million, provided that in no case shall any company group have in force at any time more than 50% of its 1991 voluntary written premium under a large deductible program.

This premium amount is defined as full coverage net premium (standard premium plus ARAP), <u>prior</u> to the application of any deductible credits. For example, if a company group wrote

$50 million in Massachusetts workers' compensation voluntary premium in 1990 and $60 million in Massachusetts workers' compensation voluntary premium in 1991, then that company group could have in force large deductible policies up to the equivalent of $15 million on a full coverage net premium basis. The actual deductible premium would reflect the application of deductible credits.

Company groups exceeding these limits will be subject to residual market assessments as if policies producing premium amounts exceeding these limits were written on a full coverage net premium basis. No portion of any residual market assessments resulting from exceeding these limits may be charged to the insured.

Insurers who have been approved for this program must complete the attached form monthly and submit it to the Division of Insurance within fifteen days following the end of each month.

The following features, at a minimum, must be included in all large deductible programs filed with the Division:

1. Only those risks whose workers' compensation full coverage net premium would otherwise exceed $500,000 of Massachusetts premium, or $100,000 in Massachusetts premium for risks with greater than $1,000,000 in countrywide premium, are eligible.

2. The minimum deductible available under this program is $100,000. Currently, no workers' compensation deductibles smaller than $100,000 may be written under any plan.

3. An aggregate limit of liability for payments within the deductible must be included. The per claim deductible amount and aggregate limit of liability sold must be reasonable in relation to the characteristics of the individual insured.

4. The program shall provide for payment by the insurer of all workers' compensation claims and expenses incurred by the insured. Under a credit plan acceptable to the Division, the insured shall reimburse the insurer for all amounts paid by the insurer on claims within the deductible limit.

5. Upon entering the program, and at all times thereafter, the insured shall provide an irrevocable letter of credit, on terms acceptable to the Division, in an amount which is sufficient to secure reimbursement to the insurer of payments within the deductible made on behalf of the insured. If a bank issuing a letter of credit to an insured fails to grant an increase in the amount of the letter of credit, as required by the large deductible policy or endorsement, or withdraws the letter of credit, the insurer must notify the Division of Insurance within 30 days. Copies of each letter of credit submitted under the program must be filed with the Division of Insurance.

6. The program must provide cancellation provisions identical to those contained in the standard Massachusetts workers' compensation policy.

7. Insurers must submit a rating formula for the program, as well as information necessary to support the reasonableness of the total charges to insureds, including, but not limited to, loss handling charges, deductible credit factors, and residual market charges.

In addition to the general program filing requirements set forth above, individual filings must be made with the Division for each policy written under the program. Each individual filing must include a derivation of the total charges to the insured, actuarial support for the reasonableness of those charges (unless the information included in general program requirement #7 is specific enough to demonstrate the reasonableness of the charges to the individual insured), the insured's Massachusetts full coverage net premium amount and countrywide full coverage net premium amount, copies of each letter of credit provided by the insured, justification for the per claim deductible amount and the aggregate limit of liability amount, a demonstration that the total premium amount in force under the program does not exceed the limitations set forth above, and any other information necessary to demonstrate that all program requirements outlined above are met.

Individual filings, as well as the general program filings, will be subject to review by the Division throughout their effective period. New individual filings must be made at each policy renewal. Individual filings for policies currently written under the program must be made by August 15, 1992. Individual filings for new and renewal deductible policies must be made at least 30 days prior to the date that the policy is written.

Failure to comply with any of the rules set forth above (including, but not limited to, monthly form submission requirements, individual policy filing requirements, and limitations on the overall premium amount that may be written under a large deductible program) is a violation of Massachusetts law and, in addition to any other applicable penalties, may result in the disapproval of an existing large deductible program or of individual large deductible policies. No portion of any penalties, charges, or other direct or indirect costs resulting from the failure to comply with any of the rules set forth above may be charged to the insured.

Please submit all required filing materials to Anthony Scavongelli, Esq., Massachusetts Division of Insurance, 280 Friend Street, Boston, MA 02114. If you have any

questions regarding workers' compensation large deductible programs in Massachusetts, please contact Mr. Scavongelli at (617) 727-7189, ext. 421, or contact Kevin Wrege, Esq., at ext. 423.

MASSACHUSETTS CANCELATION ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Massachusetts is shown in Item 3.A. of the Information Page.

The Cancelation Condition of the policy is replaced by the following:

Cancelation

1. You may cancel this policy by mailing or delivering to us advance written notice requesting cancelation. Such cancelation shall not be effective until ten days after written notice is given by us to The Workers' Compensation Rating and Inspection Bureau of Massachusetts (Bureau), or until notice has been received by the Bureau that you have secured insurance from another insurance company, whichever occurs first.

2. We may cancel this policy only if based on one or more of the following reasons: (i) nonpayment of premium; (ii) fraud or material misrepresentation affecting your policy; or (iii) a substantial increase in the hazard insured against. Such cancelation shall not be effective until ten days after written notice is given by us to you and The Workers' Compensation Rating and Inspection Bureau of Massachusetts (Bureau), or until notice has been received by the Bureau that you have secured insurance from another insurance company, whichever occurs first.

3. Any of these provisions that conflict with the law that controls the cancelation of this insurance policy is changed by this statement to comply with the law.

Section 55A of c.152 (enacted by section 84 of St. 1991, c. 398)