THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS
DIVISION OF INSURANCE
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COMMISSIONER

June 4, 1993

DIVISION OF INSURANCE BULLETIN 93-01

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 address those issues.

In accordance with 211 CMR 113.00, promulgated pursuant to M.G.L. c. 152, s. 25A(4), and in accordance with the authority of the Commissioner of Insurance under other applicable law, no new or renewal workers' compensation Large Deductible policies may be written in Massachusetts on or after August 1, 1993 unless such policies (and the programs under which they are written) conform to the conditions and limitations set forth below. The provisions of Division of Insurance Bulletin 92-01 shall remain in effect for all other large deductible policies, except that the premium cap provisions described below apply to premium in force on and after January 1, 1993.

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DATABASE AND DATA REPORTING

The Large Deductible Program shall remain in effect only as long as the (first dollar) loss and expense experience resulting from policies written under that program is included in the ratemaking databases and is used in the calculation of overall rate levels and individual classification rates by the Workers' Compensation Rating and

Inspection Bureau of Massachusetts (WCRB) as if those policies were written on a full coverage basis. The loss and expense experience resulting from such policies shall be represented by the reported data, if such data accurately reflect such experience, or by an adjustment to such data or by any other means that accurately reflects such loss and expense experience. No renewals shall be allowed under the Large Deductible Program subsequent to any rate filing by the WCRB that violates the foregoing.

PREMIUM CAPS

The total non-exempt premium amount on a full coverage standard premium plus ARAP basis in force at any time under an insurance company group's workers' compensation Large Deductible Program cannot exceed the highest of the following values:

1. 33% of the insurance company group's 1990 Massachusetts workers' compensation voluntary written net premium (after application of all rating programs, including large deductible credits);

2. 33% of the insurance company group's 1991 Massachusetts workers' compensation voluntary written net premium (after application of all rating programs, including large deductible credits);

3. 33% of the insurance company group's 1992 Massachusetts workers' compensation voluntary written net premium (after application of all rating programs, including large deductible credits);

For example, if a company group had $60 million in voluntary written Massachusetts workers' compensation net premium in 1990, $50 million in such premium in 1991, and $50 million in such premium in 1992, then that company group is permitted to have in force large deductible policies up to the equivalent of $19.8 million (33% of $60 million) on a full coverage standard premium plus ARAP basis. That is, $19.8 million equals the large deductible standard premium limit. The actual deductible premium would reflect the application of deductible credits.

EXEMPTION FROM CAPS

Prior Penalty Exemption. Premium is exempt from the above caps if all of the following apply:

(i) the risk had been written on a large deductible program in Massachusetts and was required to be non-renewed by the penalty provisions of this bulletin;

(ii) neither the insurer nor any member of its company group claiming this exemption wrote such risk in the voluntary market in the 12 months prior to the risk's qualifying for exemption under this section; and

(iii) prior to writing the risk, the company group claiming this exemption has a letter from the Division indicating that this exemption applies.

PENALTIES FOR VIOLATION OF CAPS

If a company group exceeds their large deductible standard premium limit, then, in addition to any assessment upon such group determined in accordance with the Pool Plan of Operation, such group shall be required by the Commissioner to non-renew risks under the Large Deductible Program as such risks come up for renewal until such time as the group is below their cap by an amount equal to the difference between the group's limit and the group's standard premium written on the Large Deductible Program. Company groups must remain below this lower cap for a period of one year from the time that they achieve such premium level. For example, if a company group's large deductible standard premium limit as determined above equals $1 million, then if the company writes $1.3 million (on a standard basis) on the Large Deductible Program, then the company shall be required to non-renew on large deductible policies each insured coming up for renewal on its Large Deductible Program until such time as the company is below its cap by at least $0.3 million for at least one year. That is, the company group's new large deductible standard premium limit would equal $0.7 million.

In addition to the penalties set forth in this bulletin, insurers shall also be subject to any penalties set forth in 211 CMR 113.00.

MINIMUM REQUIREMENTS FOR LARGE DEDUCTIBLE PROGRAM FILINGS

The following features must be included in all Large Deductible Programs filed with the Division:

1. Only those risks whose workers' compensation full coverage standard premium plus ARAP would otherwise exceed $500,000 of Massachusetts premium, or $50,000 in Massachusetts premium for risks with greater than $1,000,000 in countrywide premium (not including self-insurance "premium") are eligible.

2. The per claim deductible available under this program shall be at least $100,000 and at most $2 million. No per claim limit shall exceed 50% of the insured's countrywide full coverage standard premium.

3. An aggregate deductible limit must be included. For insureds with less than $1 million in countrywide premium, this aggregate limit may not exceed two times the full coverage countrywide standard premium of those insureds. In all cases the aggregate deductible limit sold must be reasonable in relation to the characteristics of the individual insured and the per claim deductibles.

4. The program shall provide for payment by the insurer of all workers' compensation claims and expenses incurred by the insured. The insured shall reimburse the insurer for all amounts paid by the insurer on claims within the applicable deductible limit. The insured shall be given thirty days from receipt of a bill to make such payments to the insurer.

5. Upon entering the program, and at all times thereafter, the insured shall provide cash and/or cash equivalent short term securities (U.S. Treasury Securities with a maturity of one year or less) which are held in a legally binding escrow account, or a clean unconditional and irrevocable letter of credit in an aggregate amount which is sufficient to secure reimbursement to the insurer of payments up to the full amount of the aggregate deductible limit. The letter of credit must contain an "evergreen clause" which provides that the letter automatically renews in the absence of 60 days written notice of the insured's intent not to renew such letter. 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 and may not renew such risk without permission of the Division. Copies of each letter of credit submitted under the program must be kept on file by the insurer and be available for inspection by the Division of Insurance upon request. Insurers may request authority to use alternative methods of security, or to modify the terms of the security called for in this paragraph, by submitting a description of such alternatives or modifications as part of the annual filing set forth in Paragraph 8 of this section. Such submissions shall be made no less than thirty days prior to the proposed use of such alternatives or modifications.

6. The program may not provide cancellation provisions that differ in any respect from those contained in the standard Massachusetts workers' compensation policy.

7. The program shall provide for the billing and collection by insurers of the Massachusetts D.I.A. assessment upon each

insured written on the Large Deductible Program as if such insured were written on a full coverage standard premium basis. In addition, large deductible credits shall be applied subsequent to experience rating and shall be reported as such in the Unit Statistical Plan. (This is to assure that standard premium will not include large deductible credits.)

8. All insurers wishing to write large deductible policies in Massachusetts must make an initial filing, on or before August 1, 1993. Insurers must annually complete and submit the attached form (LDP FORM A) with their filings. To be eligible to write under the Large Deductible Program, insurers must receive annual approval of their LDP FORM A filings from the Division of Insurance. The information provided must support the reasonableness of the total charges to insureds, including, but not limited to, loss handling charges, deductible credit factors, and residual market charges. Each insurer must submit along with LDP FORM A an agreement to abide by the non-renewal provisions in the section "PENALTIES FOR VIOLATION OF CAPS" above in any instance in which the Division determines that the insurer has written large deductible policies in violation of the premium cap for that insurer. In addition, a copy of the large deductible endorsement that will be attached to policies in this program must be submitted for approval along with LDP FORM A.

9. Companies are not permitted to utilize formulas that include parameters that are determined based solely on underwriting judgment. However, reasonable "flex bands" around the pricing formula used by the insurer are permitted where approved as part of LDP FORM A.

10. In addition to the general program filing requirements set forth above, quarterly information must be reported in accordance with attachment LDP FORM B. Note that LDP FORM B must include the following: (i) a statement which certifies that policies written under the company's Large Deductible Program are consistent with its LDP FORM A and the endorsement submitted with that form; (ii) the Declaration Page(s) from large deductible policies that were written during the calendar quarter reflected in the submitted form (names of insureds may be blotted out on such page(s)); and (iii) certification that policies declared to be exempt from the standard premium large deductible limit have been so declared pursuant to the provisions of this Bulletin and that the insurer's large deductible writings are within these limits. LDP FORM B must be submitted to the Division within 30 days of the close of each calendar quarter.

FAILURE TO COMPLY

Failure to comply with any of the rules set forth above (including, but not limited to, quarterly 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 withdrawal of permission to write any new large deductible policies. Companies or company groups which have forfeited the right to write policies under the Large Deductible Program may apply for readmission to this program no sooner than two years from the date of withdrawal of permission. Companies which do not correctly report loss and expense information to the WCRB and/or the State Rating Bureau shall be considered to be in violation of this bulletin and shall be subject to the penalties set forth herein. No portion of any direct or indirect costs resulting from the failure to comply with any of the rules set forth above or in 211 CMR 113.00 may be charged to the insured.

SUBMISSION OF FILINGS; INQUIRIES

Please submit all required filing materials to Ms. Lucinda Woods, Massachusetts Division of Insurance, 280 Friend Street, Boston, MA 02114. If you have any questions regarding the Workers' Compensation Large Deductible Program in Massachusetts, please contact Ms. Woods at (617) 727-7189, ext. 426 or Burt Feinberg, at ext. 428.