

PROJECT HISTORY – 2008

GUIDELINES FOR THE FILING OF WORKERS' COMPENSATION "LARGE DEDUCTIBLE" POLICIES & PROGRAMS (#1970)

1. Background

The Workers' Compensation Large Deductible Study was developed through the NAIC/IAIABC Joint (C) Working Group. The Study was adopted by the NAIC in March 2006. The purpose of the Study was to inform regulators on current workers' compensation large deductible issues and provide findings and recommendations in regard to these issues. There were 17 Findings and Recommendations identified.

Finding and Recommendation No. 5 stated that insurance departments should review their large deductible approval standards and procedures to assure that undesirable practices are not allowed owing to regulatory loopholes, shortcomings in regulatory oversight, or a lack of clarity in the applicable law. The white paper therefore recommended that the Workers' Compensation (C) Task Force be charged to develop approval guidelines for large deductible policies.

Large deductible policies came into existence during the workers' compensation market crisis in the late 1980s and early 1990s. Today, large deductible policies are a major factor in the workers' compensation marketplace. Large deductibles represent an intermediate economic strategy between self-insurance and complete loss transfer to an insurer. Above a deductible threshold, the large deductible policy protects the employer from catastrophic losses. Below the threshold, the policy protects workers from the risk that the employer will default on its share of claims obligations.

The insurer of a large deductible policy makes the same unconditional promise made by all workers' compensation insurers—that all valid claims arising out of injuries occurring within the policy period will be paid according to state benefit laws. This "first-dollar liability" of the insurer distinguishes deductible policies from excess policies. Workers' compensation excess policies are intended for use only by authorized self-insurers, in which the insurer is only liable (to the employer, not the employee) for claims in excess of a specified attachment point.

The distinction between large deductibles and small deductibles is hypothetically only a difference of degree. Usually, however, the marketplace does draw a line because the two products are geared to different markets and, where permitted by state law, large deductibles tend to be very large (i.e., \$100,000 often is the low end of the range).

2. Formation and Charge of Working Group

The Large Deductible Study Implementation (C) Working Group was formed by the Workers' Compensation (C) Task Force during the NAIC 2006 Spring National Meeting. The following Task Force charge encompassed the Working Group's activities:

Appoint a Large Deductible Study Implementation (C) Working Group to assure that the charges presented in the Findings and Recommendations of the NAIC Workers' Compensation Large Deductible Study are properly completed.

As part of this charge, the Working Group held its first conference call on April 19, 2006, to consider how best to fulfill Recommendation No. 5 of the Workers' Compensation Large Deductible Study by developing approval guidelines for large deductible policies.

3. Working Group Members

The following states are currently members of the Working Group, with Nebraska serving as its chair: Alaska, Arkansas, California, Illinois, Kansas, Maine, Massachusetts, Missouri, Nevada, New York, Oklahoma, and West Virginia.

4. General Description of Drafting Process

The meetings and conference calls of the Working Group have all been open. Drafts of the study were regularly circulated to members and interested parties for comment. The intent of the guidelines was to give states suggested approval guidelines for large deductible policies and programs that are in general consistent with the Workers' Compensation Large Deductible Study.

The suggested requirements were drafted with the intent to allow individual states to modify, when necessary, to conform to specific state laws. The guidelines were to neither address nor propose rate filing requirements, nor propose that rating plans be filed. The suggested filing requirements therefore pertain to large deductible form filings. However, a primary objective of these requirements is that experience incurred under these policies be reported to the statistical agent on a basis that preserves information on classifications, payroll and total losses.

5. Project Description

The final draft of the Guidelines for the Filing of Workers' Compensation "Large Deductible" Policies & Programs (Large Deductible Guidelines) consists of introductory material followed by 26 Suggested Filing Requirements.

The introductory material mentions that during the time these guidelines were being developed, the NAIC decided that issues previously being addressed through adoption of model laws and model regulations will instead be addressed by the adoption of guidelines if there is not a widespread feeling among NAIC members that the NAIC should strongly encourage adoption by the states on a uniform basis. This document, however, was never intended for adoption as a model law or regulation, but rather was intended as a set of guidelines for use by the individual states. While parts of this document may cause a state to consider law changes, no attempt was made to draft any suggested statutes or regulations. Additionally, this document encourages each state to make its version of the Large Deductible Guidelines freely available through whatever means that the state uses to communicate its approval standards.

Below are some excerpts from the Suggested Filing Requirements:

- Insurers are neither obligated to offer large deductible policies, nor to offer them to all customers in all amounts that the insurer might file or that these guidelines might allow.
- Typically, large deductible policies will be developed by the attachment of a large deductible endorsement to an otherwise standard workers' compensation policy. Large deductible policies are still considered statutory policies, so the large deductible endorsement must not purport to negate any statutorily required provisions. Should an insurer file an entire large deductible policy form, instead of an endorsement, the regulator must take care to see that all statutory provisions are included.
- Policies written for a policyholder with a contract or agreement with a third party administrator (TPA) must be endorsed to reflect the existence of this agreement.
- The insurer must still be responsible for setting claims handling standards if it uses a TPA or an independent adjuster to handle claims.

6. Issues Raised

The Working Group discussed in detail a number of the suggested filing requirements before final changes were made. In particular, much discussion centered on how best to handle collateral requirements, professional employer organization (PEO) issues, and TPA issues pertinent to large deductible filings.

A number of jurisdictional approaches for workers' compensation large deductible filing review were examined, which included those applied in the following states: Kansas, Missouri, Oklahoma, and Texas. The Working Group also consulted with the International Association of Industrial Accident Boards and Commissions (IAIABC) regarding various aspects of the document—primarily in regard to TPA large deductible concerns.

7. Group Adoptions

The May 16, 2008, draft Large Deductible Guidelines was unanimously adopted by the Working Group during its May 22, 2008 conference call. Both regulators and interested parties present expressed satisfaction with the final draft. The Workers' Compensation (C) Task Force and the Property & Casualty Insurance (C) Committee adopted the Large Deductible Guidelines during the NAIC 2008 Summer National Meeting held in San Francisco, California.

8. Other Pertinent Information

In further fulfillment of its charge, the Working Group is currently drafting TPA Guidelines, which revise the current NAIC model covering this same subject, except the revision will allow states to include workers' compensation within the scope of the law.