GUIDELINES FOR THE FILING OF WORKERS' COMPENATION "LARGE DEDUCTIBLE" POLICIES & PROGRAMS

Background: For an exhaustive treatment of large deductible workers' compensation insurance, see the NAIC/IAIABC white paper, *Workers' Compensation Large Deductible Study*. The intent of these guidelines is to give states suggested approval guidelines for large deductible policies and programs that are consistent with that detailed study, and to give a few comments on the reasoning behind some of them. Unfortunately, the *Large Deductible Study* has become dated in some respects (TPA-related matters being the prime example), which means that the reader should supplement that background material with a review of relevant NAIC activity since then.

Status of these "Guidelines": During the time that these guidelines were under development, the NAIC decided that issues previously being addressed through the adoption of model laws and regulations would instead be addressed by the adoption of "guidelines" if there was not a widespread feeling among NAIC membership that the NAIC should strongly encourage adoption by the states of the law or regulation on a uniform basis. Accordingly, many items that were previously under development as model laws or regulations were reclassified as "guidelines." This document, however, was never intended for adoption as a regulation or law ("model" or otherwise). Rather, it was (and is) intended to be adapted by the individual state to its laws and then to become part of the state's (often informal) set of published approval standards. While parts of this document may cause a state to consider law changes, no attempt is contained herein to draft any suggested statutes or regulations.

Conformance to State Laws: As referenced in the preceding paragraph, the suggested requirements will need to be modified by individual states as necessary to conform to specific state laws.

address nonpayment of deductible reimbursements, this should be viewed as a ground for cancellation under laws permitting cancellation for "substantial breach of contractual duties" or similar statutory language. It is also recommended that states allow the insurer to have the right to offset unpaid deductible amounts against unearned premiums, if any, in the event of cancellation of the policy.

(7) Coverage written under these forms is customarily considered workers' compensation coverage for Annual Statement reporting, workers' compensation law, and insurance laws. It is not necessary that these items be mentioned in a manual page for the insurer, but nothing should be approved that states or suggests otherwise.

(8) 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 (as opposed to excess workers' compensation policies, which are written for approved self-insureds, and are typically not 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.

(9) The policy must specify the nature of the losses for which the employer must reimburse the insurer, or reimburse the TPA on the insurer's behalf. The deductible amount may be any one of the following:

(a) Benefits only;

(b) The sum of benefits and actual LAE or ALAE; or

(c) Benefits only, but the employer is liable to reimburse actual LAE or ALAE in addition to the deductible applying to the benefits.

(d) Any reasonable pro-ration of LAE or ALAE between the insurer and the employer is acceptable.

Employers' liability coverage may be included with any of the above. (*Some state laws may not allow all of these options and this language will then need to be restricted accordingly.*)

(10) The policy must specify whether the deductible is per-person or per-accident. The most common form of deductible (per-accident for accidental injury and per-person for disease) is acceptable; unique proposals should be considered on their merits.

(11) Even in states that otherwise exempt large deductible workers' compensation insurance from rate filing requirements, manual pages and/or other documentation

This recommendation is not intended to imply that that states should limit large risk flexibilities otherwise granted for workers' compensation rates or premium payment provisions. To the contrary, Item 21 in these guidelines recommends that states grant policyholders and insurers considerable flexibility in the negotiation of collateral and deposit arrangements.

(13) Policy rating must preserve and use usual payroll and classification information and require the use of audited payrolls after policy expiration. In other words, rating that does not use standard workers' compensation rating classifications and actual audited payrolls should not be ai3 (al)1 (t)7.9 (is)-1.d p ha

deductible arrangement is premium, except to the extent that the law clearly provides that certain payments may legally be considered as something other than premiums. This exception will almost

(b) When collateral is required, the large deductible endorsement must refer to the existence of the collateral agreement and provide that collateral must be maintained in accordance with that agreement.

At this writing, problems and abuses in this area do not appear to be a subject of significant complaints. Should problems develop in the future, or should states have requirements or limitations regarding collateral agreements that they wish to apply, then the best recourse may be a requirement for these to be mentioned in the insurer's accompanying manual pages. Rulemaking authority may be another possible alternative to the application of form filing laws.

(21) As just discussed, it is common and prudent for an insurer to require collateral when writing a large deductible policy. The amount, adequacy, and especially any lack of collateral are important concerns for actuaries and financial examiners that are evaluating the liabilities of an insurer. Notwithstanding the importance of collateral, this document recommends that states not require insurers' large deductible filings to include a requirement that collateral be posted unless the state has a law to this effect. Presumably, an insurer would only write a large deductible account without collateral in return for a higher price or for accounts (e.g., a governmental entity) where the chance of default was believed to be remote. This is not to discourage an insurer's filing from including a requirement for collateral, only to note that such a requirement should not be a condition for approval unless the state has a law to this effect.

(22) Even when not required by state law, states may wish to consider minimum standard premium size, payroll, net worth, or other provisions of this nature for risks to be written on a large deductible policy.

TPA agreement; state that the policyholder cannot switch TPAs without the prior consent of the insurer; and provide for actions in case of nonpayment or policyholder default.

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