

## 800 Workmen's Compensation

### 801 Workmen's Compensation Deductible [Formerly Regulation 40]

#### 1.0 Authority.

- 1.1 This regulation is adopted and promulgated in accordance with 18 **Del.C.** §314, Delaware Insurance Code; 19 **Del.C.** §2305, Workmen's Compensation Code; and 29 **Del.C.** Ch. 101, Administrative Procedures Act.

#### 2.0 Purpose.

- 2.1 An amendment to the Delaware Workmen's Compensation Code 19 **Del.C.** 2305(c) was enacted during the 1982 session of the Delaware Legislature, to become effective December 1, 1982. The amendment requires every insurer writing workmen's compensation insurance in Delaware to "...offer to write each such policy subject to a deductible applying only to medical reimbursement and death benefits. The insured employer shall be permitted to accept or reject such a deductible at the time the policy is issued or renewed..." The statute provides that the deductible shall be available from \$500 to \$5,000 in increments of \$500. The deductible shall apply to each occurrence during the policy term.
- 2.2 This regulation advises insurers of the requirement as described above and establishes the procedures to be followed for implementing the statute.

#### 3.0 Definitions.

- 3.1 For the purpose of this regulation, the following definitions shall apply:
- "Claim Administration"** — The endorsement shall provide for administration by the insurer in the same manner as for policies without a deductible. This shall include payment by the insurer to the claimant of the deductible amount. The insurer shall have full discretion for claim settlement as provided by the Delaware Workmen's Compensation Code and shall make payments to the claimant or medical provider in accordance with that statute.
- "Deductible"** — The deductible shall be as elected by the insured at the inception or renewal of the policy, such election to be irrevocable for the duration of the policy. The deductible shall be: any amount between \$500 and \$5,000 (increments of \$500); applied separately to each occurrence regardless of the number of employees; applicable only to medical reimbursements and death benefits paid under the policy.
- "Endorsement"** — Refers to an endorsement prepared and filed by the Delaware Compensation Rating Bureau on behalf of insurers writing workmen's compensation insurance in Delaware and approved by the Delaware Insurance Department. The endorsement shall specify the amount of the deductible; the coverage to which it applies; shall give notice to the insured of the insurer's discretion in claims settlement; contain provisions for reimbursement of the deductible by the employer; and shall put the employer on notice that the coverage may be cancelled for failure to reimburse the insurer for any payment involving the deductible.
- "Occurrence"** — An occurrence shall be defined as any incident which results in a payment by an insurer under a workmen's compensation policy. An occurrence may result in claims by multiple employees in which case only one deductible is applicable to all claims growing out of a single incident or occurrence.
- "Reimbursement to the Insurer"** — Shall refer to payment of the deductible amount by the insured to the insurer for first dollar claim payments (medical reimbursement or death benefits only) made by the insurer on behalf of the employer.

#### 4.0 Requirement.

- 4.1 New Policies

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- 4.1.1 Insurers shall, for all new workmen's compensation policies written on or after December 1, 1982 provide the insured with a notice of election substantially similar to Delaware Insurance Form (B) (Attached). The insured shall sign the form acknowledging the offer of a deductible endorsement and his/her acceptance or rejection of the endorsement.
- 4.1.2 The employer's election shall be valid for the duration of the policy and subsequent renewals, subject to the employer's right to change his/her election on renewal (on the anniversary rating date or as provided in Rule I(G) of the Delaware Compensation Manual for applicable policies).
- 4.2 **Renewal Policies**
  - 4.2.1 The insurer shall provide a notice of election to the policyholder of each policy now in force which is to be renewed on or after December 1, 1982. The notice of election form (Delaware Insurance Form B) shall request the insured to complete and return the form prior to the anniversary or renewal date of the policy.
  - 4.2.2 The insurer may elect to make a one-time mailing to all policies in force or may send the notice of election form in conjunction with normal renewal procedures.
  - 4.2.3 If no response is received within 30 days of the mailing date, the insured will be deemed to have rejected the deductible endorsement on the condition that the insurer can provide proof of mailing to the policyholder at his/her address of record. A certificate of mailing as described in 18 **Del.C.** §3903(a)(4)c shall constitute adequate proof of mailing.
  - 4.2.4 If the insured does not respond to the notice of election and the insurer elects to renew the policy, it shall issue the renewal on a nondeductible basis.
  - 4.2.5 The insured's election shall remain in force for the duration of the policy and subsequent renewals, subject to the insured's right to change his/her election at each renewal (or anniversary date for applicable policies).
- 4.3 **Deductible Endorsement**
  - 4.3.1 A deductible endorsement, filed by the Delaware Compensation Rating Bureau and approved for use by the Delaware Insurance Department, will be attached to and become a part of each policy for which the policyholder's election form requests a deductible endorsement. The endorsement shall give notice to the insured of the:
    - 4.3.1.1 amount and conditions of the deductible;
    - 4.3.1.2 insurer's discretion in claims settlement;
    - 4.3.1.3 insurer's right to cancel the policy (after 10 days written notice by certified mail to the address of record) for the insured's failure to reimburse a deductible expense as defined herein;
    - 4.3.1.4 fact that the deductible election is per occurrence as defined herein; and
    - 4.3.1.5 that the deductible election may not be changed prior to the next renewal date.
- 4.4 **Cancellation For Failure of the Insured to Reimburse**
  - 4.4.1 The insurer shall administer all claims for deductible policies in the same manner as for nondeductible policies. This includes payment of first dollar coverage. After payment is made for which the insurer is entitled to reimbursement, the insurer will provide the employer insured with a statement of payments made and request reimbursement.
  - 4.4.2 If reimbursement is not received within 30 days of the statement mailing date, the insurer may send a notice of cancellation to the insured. Such notice must be by certified mail as defined in 18 **Del.C.** §3903(a)(4)c. Cancellation may not become effective sooner than 10 days after the mailing date as established by postal receipts. A copy of the notice of cancellation shall be provided to the producer of record, the Industrial Accident Board and the Delaware Compensation Rating Bureau.
  - 4.4.3 Provided payment is received by the insurer or its agent prior to the coverage cancellation date, the coverage will be continued in effect.
  - 4.4.4 Policies which are cancelled because of the insured's failure to reimburse for deductible expenses may, at the insurer's option, be reinstated with no loss of coverage on receipt of the applicable reimbursement.

- 4.4.5 If the original insurer declines to reissue or reinstate the cancelled policy, the policyholder may make application to another insurer or may apply for coverage through the Delaware Workmen's Compensation Assigned Risk Plan.
- 4.4.6 An employer applying for workmen's compensation coverage through the Assigned Risk Plan will be deemed ineligible for coverage so long as there is an unsatisfied deductible reimbursement outstanding.

**5.0 Effective Date**

- 5.1 This regulation shall become effective on December 1, 1982.

Attachments:

- 1. Deductible Endorsement Form — Delaware
- 2. Delaware Insurance Form B

**Deductible Endorsement — Delaware**

In consideration of the reduced premium charged for this policy, the insurance afforded by the policy for death benefits and for medical benefits payable under the Delaware Workers' Compensation Law applies only to death and medical reimbursement benefits in excess of the deductible amount shown below. The deductible shall apply separately to each accident, regardless of the number of people who sustain injury by such accident.

The company shall pay the deductible amount to the persons entitled thereto. Upon notice of payments by the company, the insured will promptly reimburse the company for any amounts so paid. Failure of the insured to reimburse the company, within 30 days of statement mailing date, may result in the coverage being cancelled pro rata upon ten (10) days written notice and any resulting return premium may be applied to the deductible amount due.

The deductible amount is \_\_\_\_\_ for each occurrence.

The premium is reduced \_\_\_\_\_% in consideration of this deductible.

Note 1: Use this Endorsement with the standard policy to provide a death and medical benefits deductible selected in accordance with 19 **Del.C.** §2372.

Note 2: The company may use its own attachment clause and method of execution.

**Delaware Insurance Form B**

Notice of Election to Accept or Reject an Insurance Deductible for Delaware Workers' Compensation Death and Medical Benefits

Delaware law permits an employer to buy workers' compensation insurance with a deductible. The deductible is for death and medical benefits and applies to each accident. The deductibles available and the corresponding premium reductions are as follows:

| <b>Deductible Per Accident</b> | <b>Percent Premium Reduction</b> |
|--------------------------------|----------------------------------|
| \$500                          | 4.0                              |
| 1,000                          | 5.5                              |
| 1,500                          | 6.5                              |
| 2,000                          | 7.0                              |
| 2,500                          | 7.5                              |

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|       |      |
|-------|------|
| 3,000 | 8.0  |
| 3,500 | 8.5  |
| 4,000 | 9.0  |
| 4,500 | 9.5  |
| 5,000 | 10.0 |

You are not required to choose a deductible program. However, if you do so choose, it is to be understood that your insurance company will administer and pay all claims and that you will reimburse the insurance company for payments it makes within the amount of the deductible selected. Failure to reimburse the insurance company for such deductible amounts within 30 days can result in cancellation of coverage.

Please show whether or not you want the deductible by initialing the appropriate choice below.

\_\_\_\_\_ Yes, I want a deductible of \_\_\_\_\_ applied to death and medical benefits under the Delaware workers' Compensation law. I understand that the company shall pay the deductible amount and be reimbursed by the employer shown below.

\_\_\_\_\_ No, I do not want the deductible described in this Notice.

I understand that in accordance with 19 **Del.C.** §2372, I have the option of modifying the above deductible program choice at the time of renewal of my workers' compensation insurance policy with the insurance company named below.

\_\_\_\_\_  
DateEmployer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Insurance Company