

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

REVISED BULLETIN NO.: 10-2009

TO: ALL WORKERS' COMPENSATION POLICYHOLDERS, THIRD PARTY ADMINISTRATORS, ARKANSAS WORKERS' COMPENSATION COMMISSION, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: WORKERS' COMPENSATION REPORTING AND RATING REQUIREMENTS

DATE: August 6, 2010

REPORTING REQUIREMENTS PURSUANT TO ARK. CODE ANN. § 11-9-106

It has come to the attention of the Department that some employers have been making direct payments for medical bills incurred on workers' compensation claims, both with and without the knowledge of their insurer.

Please be advised that employers directly paying medical bills for injured employees may be considered in violation of Ark. Code Ann. § 11-9-106(a), which deals with making materially false representations for the purpose of avoiding payment of the proper insurance premium.

Some employers and insurers are operating under the erroneous impression that Ark. Code Ann. § 11-9-813, which authorizes insurers to offer deductibles to policyholders, also authorizes an employer to make direct payments on claims under the deductible amount. The law simply does not allow for such direct payments, **WITH OR WITHOUT A VALID DEDUCTIBLE PROGRAM.**

Even with an approved deductible program, all claims must be paid on a "first dollar" basis by the insurer or its third party claims administrator. The insurer will be reimbursed by the employer for any deductible amounts paid by the insurer.

When a third-party claim administrator ("TPA") is adjusting claims under a workers' compensation deductible program, the TPA acts as the agent of the insurer. In such a program, a loss escrow account used to make payments within the deductible layer may be funded by the employer, provided that all of the following criteria are met:

1. There must be a written contract in place between the TPA and the insurer that provides that the TPA is acting on behalf of the insurer for the adjustment and payment of claims both within and in excess of the deductible.
2. The contract must require the TPA to periodically provide accurate and timely data to the insurer on all claims paid from "first dollar" to enable the insurer to report the data to the appropriate regulatory authority or advisory or rating organization, and to ensure that the calculation of the employer's experience rating reflects all claims.
3. To ensure that claims are paid without interruption, the contract must require the insurer to immediately replenish the loss escrow account held by the TPA and/or insurer if it is not replenished timely by the employer.
4. The TPA must notify injured workers at the onset of a claim that the claim is being adjusted and, if appropriate, will be paid on behalf of the insurer to avoid any possible confusion on the part of claimants that the employer is a self-insured entity.
5. The employer must report all claims to the TPA for payment and must not pay any amounts within the deductible outside of the funding arrangement provided for in the contract between the TPA and the insurer.
6. No agreement between a TPA and an insurer shall alter the terms of the insurance policy approved by the Department.
7. Subject to the contractual right of the employer to a refund of unearned premium or deposit as provided in the insurance policy, any funds paid into the loss escrow account are to be administered by the TPA in accordance with instructions from the insurer.
8. All large deductible workers compensation insurance policies must contain an endorsement to the policy that clearly states:
 - a. The TPA is responsible to the insurer for guidance and final authority in matters regarding whether an injury or illness constitutes a claim for purposes of the workers compensation policy; and
 - b. The insured may not pay claims directly or decline to report claims to the TPA nor attempt to control or influence the TPA and insurer's claims adjustment processes, except as allowed by A.C.A. § 23-63-112, but shall cooperate fully in furnishing all information to the TPA that in the TPA's opinion is relevant to a workers compensation claim.

If there is a written contract in place between the TPA and the employer, the insurer shall require the contract to provide that:

1. The TPA is acting on behalf of the insurer for the payment of claims both within and in excess of the deductible.
2. The TPA shall periodically provide accurate and timely data to the insurer on all claims paid from "first dollar".
3. The insurer shall immediately replenish the loss escrow account if it is not replenished timely by the employer and shall bill the employer for such amount. The employer's failure to reimburse the insurer according to the terms of the insurance policy shall be reason to cancel the policy for non-payment of premium.
4. The employer must report all claims to the TPA and shall not pay directly, or procure payment indirectly, any amounts within the deductible outside of the funding arrangement provided for in the contract between the TPA and the insurer. Although the employer has the right to be informed of potential settlements under Ark. Code Ann. § 23-63-112, the employer has no right to direct whether a claim is paid or denied nor the amount to be paid by the insurer or its TPA.
5. The TPA shall not charge the employer for safety services required by the Arkansas Workers' Compensation Commission.
6. The TPA may charge and collect from the employer for that portion of the unallocated loss adjustment expenses that are the TPA's service fees so long as those amounts are reported to the insurer and the insurer's filed rates provide a method for the reduction in its loss cost multiplier for TPA collected unallocated loss adjust expenses.
7. No agreement between a TPA and an insurer shall alter the terms of the insurance policy approved by the Department.
8. Subject to the contractual right of the employer to a refund of unearned premium or deposit as provided in the insurance policy, any funds paid into the loss escrow account are to be administered by the TPA in accordance with instructions from the insurer.

If you are aware of any direct payments being made by an employer, other than the replenishment of the loss escrow account, for claims within a large deductible program, you are advised to immediately notify the employer to cease this practice. Moreover, all payments must be reported under the new Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007. Failure by the employer to do so may result in a criminal penalty or other violations of state or federal law.

RATING REQUIREMENTS PURSUANT TO ARK. CODE ANN. § 23-67-219

Under the provisions of Ark. Code Ann. §23-67-219, this Department has the authority to approve or disapprove "rating plans" of carriers as they relate to workers compensation and employers liability insurance. This authority over rating plans includes the right to approve or to disapprove large deductible workers compensation programs.

Following are the criteria or "guidelines" that the Property and Casualty Division will apply in reviewing such filings by rate service organizations or by individual workers' compensation carriers:

1. Deductibles may be offered in such amounts and ranges as the carrier may desire and for which it obtains approval from the Department. All available deductibles must be displayed in the rules manual.
2. Carriers must make a reasonable financial examination of the employer desiring a large deductible program by requiring a financial statement acceptable to the insurer of the employer's most recently completed fiscal year in order to determine whether the employer is fiscally sound and responsible enough to bear the economic burdens of such a program. A follow-up financial examination must be performed before any such program may be renewed beyond the initial term. No term may exceed one year. The filing must contain a description of the financial assurance the carrier intends to require.
3. Carriers must receive irrevocable financial guarantees of indubitable value and unquestionable right of recourse. Such guarantees must be provided by the employer and placed under the sole control of the carrier in a sum equal to no less than *three* months of the carrier's reasonably anticipated claim exposure posed by the particular risk. The financial guarantee must consist of:
 - (i) cash;
 - (ii) securities designated by the Securities Valuation Office of the National Association of Insurance Commissioners as Class 1 or Class 2;
 - (iii) an irrevocable letter of credit from a State or Federally-chartered banking institution that is insured by the Federal Deposit Insurance Corporation. Said banking institution may not have any affiliation or common ownership with the employer risk; or
 - (iv) certificates of deposit issued by banking institutions as delimited above, which said certificates must either be issued in the name of the carrier or be properly endorsed and assigned to the carrier.
4. The minimum premium requirement for program eligibility shall be shown in the submission.
5. If the ratings procedure to be used by the carrier is to be translated into tabular values to assist underwriters, that table must be submitted to the Department.

6. The program shall set forth precisely how the premium shall be calculated.
7. The deductible amount shall be prominently set forth on the policy declaration page.
8. The program, and each policy issued thereunder, must clearly state that all claims, beginning with the first dollar, will be paid by the carrier or its third party claims administrator and that the employer shall reimburse the carrier or its third party claims administrator for all amounts within the deductible no later than thirty (30) days from the billing.

Since failure to reimburse deductible amounts has the same effect as not paying premium, the carrier or its third party claims administrator shall issue a ten (10) day notice of cancellation *of the policy* as required by Ark. Code Ann. §11-9-408(b)(2) if the employer does not pay any delinquent sums within the deductible within the required period.

9. The program and policies must clearly state that the carrier or its third party claims administrator shall handle and administer all claims, even within the deductible amount, and that the carrier will be responsible to and have the right to defend all claims, even within the deductible amount.
10. The program and policies issued thereunder must specifically state that *all claims* must be reported and paid by the carrier or its third party claims administrator regardless of the amount thereof.
11. All traditional premium and claim statistical reporting will be made to the National Council on Compensation Insurance on these policies just as it is on all other workers' compensation policies.
12. Loss costs filed by the National Council of Compensation Insurers ("NCCI") contemplate both loss adjustment expenses and Arkansas Workers' Compensation Commission's required safety services provided to employers. As such, these expenses may not be unbundled and charged separately. Other fees and expenses related to servicing a policy are included in the premium paid the insurer under Ark. State. Ann. §§ 23-67-310 and 23-79-101(2).
13. It has come to our attention that there has been some confusion as to how workers' compensation premiums are to be reported on "Schedule WC --Computation Of Annual Workers' Compensation Commission Taxes" included in your Annual Statement packet. The definition of Written Manual Premium given on this form was written in 1983 before many of the current innovations to workers' compensation programs were implemented. We want to clarify this definition for today's users.

The definition on Schedule WC is: "Written manual premium shall mean premium produced in a given year by the manual rates in effect during the experience period and

shall exclude the premium produced by the expense constant. Further, written manual premium for the purpose of this law means premium before any allowable deviated discounts, any experience rating modification, any premium discount, any reinsurance or deductible arrangement as common with fronting carriers, any dividend consideration, or other trade discount."

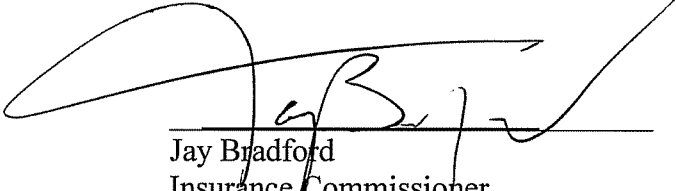
Written manual premium is the premium calculated by using the [**payroll divided by 100**] multiplied by the company's filed rates (not loss costs). It does **not** include expense constants, or any other modification (experience modifiers, credits, debits, deductibles, etc).

EXAMPLE

Payroll = \$90,000
Rate = 1.50

$\frac{\$90,000}{100} \times 1.50 = \$1,350$

Inquiries concerning the deductible program should be directed to Carol Stiffler, Property and Casualty Division, at (501) 371-2807. Reports of possible fraudulent activity should be directed to Greg Sink, Criminal Investigation Division, at (501) 371-2790.



Jay Bradford
Insurance Commissioner
State of Arkansas

August 6, 2010
Date