MARSH

MARSH INSIGHTS:

CHANGES TO THE NEW YORK STATE WORKERS' COMPENSATION ASSESSMENTS

As announced by the New York Workers Compensation Board (NYWCB or "the Board") on October 23, 2013, significant changes were made to the workers' compensation assessment process for New York employers effective with assessment billings issued after January 1, 2014.

Under the new rules, multiple assessments that were previously issued are now combined into one assessment billing that includes:

1. (15-8) Second Injury Fund (Special Disability Fund).
2. (25-A) Reopened Case Fund. (Fund is now closed to new claims effective January 1, 2014, but existing claims are still covered in the General Fund.)
3. (151) Workers Compensation Board expenses.
4. Interdepartmental (IDP) expenses.

One reason for these changes is that the Reopened Case Fund (25-A) will be closed effective January 1, 2014, for new claims. This likely will have an impact on policyholder accruals for loss sensitive program buyers, insurer loss ratios, and future accrued assessments.

QUALIFIED SELF-INSUREDS

Historically, calendar year assessments were generally based on unlimited paid indemnity losses for qualified self-insurers at a rate of approximately 46% on those losses. Beginning with the 2014 assessment, the promulgated assessment rate will be 13.8%, based on the NYWCB loss cost rate by job classification code; however, this will not be subject to experience modification. The loss cost rate excludes the insurer expense multiplier, so these rates will be lower.

In addition, self-insured employers still will be subject to the section 50-5 assessments, which cover administrative costs of the self-insurance division, along with costs associated with insolvent self-insured employers and trusts. Based on prior years, this is estimated to be 7.5% on prior year paid unlimited indemnity losses. This assessment has varied significantly in recent years due to the insolvent trusts, so it is difficult to predict what the exact assessment will be from year to year. The reform bill passed in 2013 included authorization for the NYWCB to issue bonds to cover the costs of transferring the liability from the defaulted trusts to carriers. As these liabilities are eliminated, the assessments will decrease.

POTENTIAL IMPACT FOR QUALIFIED SELF-INSURERS

For 2014 and beyond, the change from loss-based assessments to premium-based assessments means that a significant portion of the future assessment will no longer need to be carried as a liability. Only the 50-5 assessments will continue to be based on losses and subject to accrual. A potential accrual reduction exists, and Oliver Wyman, one of the Marsh & McLennan Companies, can be engaged to walk you through that calculation. Additionally the amount paid over the next few years may be materially different than your recent expenditure, and we recommend you consult your Marsh Advisory Specialist.

PRIVATE INSURED PROGRAMS (FIRST DOLLAR, RETROSPECTIVE, AND DEDUCTIBLE)

During the past year, assessments collected by insurers for their policyholders were generally based on modified standard premium at an approximate rate of 18.8%. For 2014, the promulgated assessment rate will be 13.8%, based on the NYWCB job classification code rates (not loss cost rates) and will be subject to experience modification.

POTENTIAL IMPACT FOR POLICYHOLDERS WITH PRIVATE INSURERS

The process of remitting payment for these assessments remains unchanged; however, effective January 1, 2014, the rate has been reduced from 18.8% to 13.8% of standard premium.

Marsh is now investigating how in-force policies are affected by this decrease and recommends that you consult your Marsh Advisory Specialist to walk you through the process.

NEW YORK STATE FUND INSURED PROGRAMS

For policyholders with policies in force as of January 1, 2014, the assessment percentage will be 9.8% for the next two policy years. Thereafter, the New York State Fund will charge the same percentage as private insurers charge. For new New York State Fund policyholders the rate effective January 1, 2014, will be 13.8%. The New York State Fund will apply these assessment percentages after premium discount.

SELF-INSURED MUNICIPALITIES

The NYWCB will determine a fair and blended rate to be charged to total payroll. The standard premium will be equal to the payroll multiplied by the blended rate. The assessment percentage will be 13.8% of standard premium.

IMPACT FOR ALL POLICYHOLDERS: CLOSURE OF REOPENED CASE FUND (25-A)

The Reopened Case Fund (25-A) will continue to pay claims, and will also pay claims where applications for 25-A relief have been made by December 31, 2013, and the claim meets the qualifications for 25-A relief as of that date. The conditions for 25-A are that a minimum of 7 years have passed since the date of loss, a minimum of 3 years have passed since the last compensation payment, and that there has been a true closing of the claim at the board with no further proceedings contemplated. These conditions must be met as of December 31, 2013, in order for there to be consideration of 25-A relief. If the claims do not meet these conditions as of December 31, 2013, they will be closed out, regardless as to the date of loss. With closure of 25-A, there will be an administrative backlog as all applications for 25-A are adjudicated. Therefore, it likely will be several years before all applications are reviewed, and the final claim population in 25-A is determined. The Reopened Case Fund will continue to pay claims that have been (or ultimately are) accepted into the fund, and it will likely take 40+ years to runoff 25-A.

The impact on all employers is twofold:

- First, assessments for 25-A, just like assessments for 15-8, will continue for 40+ years as the claims runoff in 25-A proceeds. Therefore, assessments for 25-A will for decades be a large part of the annual assessment cost (now 13.8% of standard premium) paid by all employers in New York.
- Second, there maybe a large increase going forward of the cost of claims in New York, given that 25-A will no longer be available. This cost increase will affect both new claims and old claims, regardless as to date of loss. This will impact the loss forecast for new claims as well as the balance sheet accrual for the unpaid cost of old claims. Oliver Wyman and Marsh Claim Advocacy group can be engaged to assist you through this process and ensure compliance.

It should be noted that the closure of the 25-A fund will change the loss development triangles for employers. For anything not filed with the fund by December 31, 2013, liability for payment of reopened claims rests with the employer/carrier. This will result in longer claims tails and potentially increased administrative expenses.