TITLE 365. INSURANCE DEPARTMENT
CHAPTER 15. PROPERTY AND CASUALTY

SUBCHAPTER 1. GENERAL PROVISIONS

365:15-1-3.1. Workers' compensation optional deductible form

~~The offer of an optional deductible on all Oklahoma Workers' Compensation policies required pursuant to 85A O.S. § 95, shall be in the form set forth in Appendix B of this Chapter which shall be filed with and approved by the Insurance Commissioner. The form shall be provided to the proposed insured in writing separately from the application and shall read as set forth in Appendix B of this Chapter.~~

(a) The Administrative Workers' Compensation Act, 85A O.S. § 95 ("AWCA"), requires insurers issuing policies of workers' compensation insurance to offer, as a part of the policy or as an endorsement to the policy, deductibles, optional to the policyholder, for benefits payable under the AWCA. Each policy of workers' compensation that is issued, delivered, issued for delivery, or renewed under the AWCA shall include such optional deductible. The mandatory optional deductible required by the AWCA will be satisfied by the offer of a "Small Deductible" as defined in this Section. If an applicant and insurer mutually agree to a Large or Mega Deductible, such agreement shall satisfy the requirement of the AWCA that insurers offer optional deductibles. The selection of a Small, Large, or Mega Deductible shall be evidenced by signature of the applicant employer on the Commissioner's designated Acceptance/Rejection Form as contained in Appendix "B" to this Chapter.

As used in this Section:

1. "Deductible" means a policy provision or endorsement that, while requiring the insurer to pay 100% of each covered claim, creates a corresponding obligation of the insured employer to reimburse the insurance company for any portion of that claim that is part of the deductible.
2. "Small Deductible" means a deductible in the amount of $500.00; $1,000.00; $1,500.00; or $2,500.00, per claim. Separate deductibles may be selected by the applicant for medical benefits and for indemnity claims, for a maximum combined deductible of $5,000.00. For example, an applicant could select a $1,000.00 per claim deductible for medical benefits and a $2,500.00 per claim deductible for indemnity claims.
3. "Large Deductible" means separate medical benefits and indemnity claims deductible amount greater than $2,500.00 but not more than $50,000.00 per claim. A Large Deductible may be offered to applicants, on negotiated terms, based upon the applicant's financial condition, the applicant's industry, claims experience, and collateral. Separate deductibles may be selected by the applicant for medical benefits and for indemnity claims, for a maximum combined deductible of $100,000.00. For example, an applicant could seek a $20,000.00 per claim deductible for medical benefits and a $50,000.00 per claim deductible for indemnity claims.
4. "Mega Deductible" means combined medical benefits and indemnity claims deductible amounts greater than $100,000.00 per claim. Mega Deductibles are subject to OAC 365:15-1-3.2.

(b) Insurers may offer a contractual limit on the employer's aggregate reimbursement liability.

(c) Obligations If Deductible Option Is Selected

1. If the policyholder chooses a deductible, the insured employer shall be liable for the amount of the deductible for benefits paid for each compensable claim of work injury suffered by an employee.

2. The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical providers entitled to the benefits conferred by the AWCA, and seek reimbursement from the insured employer for the applicable deductible amount.

3. The insured employer must reimburse the insurer within sixty (60) days of a written demand. If the insured employer fails to reimburse the insurer within sixty (60) days, the insurer may seek to recover the full amount of such claim from the insured employer. In addition, the non-payment of deductible amounts shall be treated in the same manner as non-payment of premiums for purposes of cancellation.

(d) Experience Modification. Premium reduction for deductibles will be determined before the application of any experience modification, premium surcharge, or premium discounts, and, to the extent that an employer's experience rating or safety record is based on benefits paid, claims paid by the insured employer in connection with an optional deductible, as provided in this Section, shall not constitute benefits paid and charged against the experience of the employer.

365:15-1-3.2. Financial requirements – mega deductible workers' compensation policies

(a) Every insurer issuing mega deductible workers' compensation policies ("MDWC"), as defined in subsection c of this Section, shall comply with the following requirements:

(1) The MDWC policy shall require collateralization, as provided herein, of the outstanding deductible reimbursement obligations of the policyholder for any prospective period of coverage. "Collateralization" means deposit by the policyholder with the insurance company of assets to serve as security in the event that a policyholder fails to reimburse the insurer for losses within the deductible.

(2) For purposes of this section, only the following assets shall qualify as "collateral":

(A) Assets admissible pursuant to Article 16 of Title 36 of the Oklahoma Statutes;

(B) A surety bond issued by a surety insurer authorized to transact business by the Commissioner and whose financial strength and size ratings from A.M. Best Company are not less than "A" and "V", respectively; or

(C) An irrevocable letter of credit, utilizing a form designated by the Commissioner, issued by a financial institution whose deposits are federally insured. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; provided however, that a letter of credit must be replaced within three months after the date of the institution's failure to meet applicable standards of issuer acceptability.

(D) Guaranty of a solvent parental entity that has:

(i) been continuously engaged in business for not less than three (3) years immediately preceding the application for the MDWC policy;

(ii) at least one hundred (100) employees (all states included); and

(iii) at least One Million Dollars ($1,000,000.00) in net assets.

(E) Any combination of the foregoing.

(3) When a policy is written with an aggregate deductible option or per claim/aggregate deductible option, the amount of the collateral may not exceed the aggregate.

(4) Collateral held pursuant to this subsection shall be under the direct control of the insurer. Collateral shall be held for the express and sole purpose of securing the policyholder's obligations under the mega deductible workers' compensation policy. Collateral shall not be commingled with the assets of the insurer. Insurers shall not permit policyholders or agents or affiliates of policyholders, or any third party with any contractual or other relationship to the policyholder, directly or indirectly, to access such collateral.

(5) Claims information for each mega deductible insured employer and co-employer shall be maintained in the possession of the insurer for at least six years.

(6) Insurers shall not permit policyholders or agents or affiliates of policyholders, or any third party with any contractual or other relationship to the policyholder, directly or indirectly, to administer claims under a mega deductible workers' compensation policy.

(7) All agreements between insurers and policyholders relating to handling of claims by third parties shall be maintained by the insurer and made available to the Commissioner upon request.

(8) Notwithstanding any other limitation on the insurer's right to cancel the insurance, the policy shall provide that the policyholder's failure to post collateral per the policy or pay deductible reimbursements when due, are grounds for policy cancellation, upon 10 days prior notice.

(9) Before issuing or renewing a mega deductible workers' compensation policy, the insurer shall obtain an audited financial statement for the policyholder, or a financially strong parent or affiliate that has issued an unconditional financial guaranty of the policyholder's deductible obligations. The amount of the policyholder's aggregate deductible obligation is limited to no more than 20% of the total net worth of the policyholder and guarantor, at each policy inception and renewal. Net worth shall be determined as of the most recently available fiscal year-end audit.

(10) If the policy covers client employers, co-employers, subcontractors, or other employers in addition to the policyholder, the policy shall provide that deductible reimbursements are the sole obligation of the policyholder, unless such additional covered employer has given informed written consent to be jointly obligated and the employer's maximum reimbursement obligation is limited to an amount consistent with paragraph 9 of this subsection.

(11) No insurer shall issue a mega deductible workers' compensation policy to a professional employer organization as defined by 40 O.S. § 600.2, which is affiliated with such insurer.

(b) An insurer is exempt from the requirements of this Section, with the exception of paragraph 7 of subsection a, if the insurer, at the time of issuance or renewal of the policy:

(1) has an A.M. Best Company rating of A or above or a comparable rating accepted by the Commissioner, and

(2) has at least $500,000,000.00 in direct written premium.

(c) The term "MDWC policy" means any workers' compensation insurance policy that is subject to endorsements or other direct or indirect agreements between the insurer and the policyholder or others that have the effect, singly or in combination, of requiring the policyholder to bear an total risk of loss of greater than $100,000.00 for any or all claims arising in this State. For

purposes of this Section, entering into an agreement with an existing policyholder that has the effect of making its policy a mega deductible workers' compensation policy is considered to be the issuance of a mega deductible workers' compensation policy.

(d) An insurer found to be in a financially hazardous condition pursuant to the applicable Sections of Title 36 of the Oklahoma Statutes, or subject to an equivalent regulatory determination in any other state, may not issue or renew a MDWC policy.

(e) In addition to the provisions of Title 36 of the Oklahoma Statutes, an insurer issuing MDWC policies may be found to be in hazardous financial condition when one or more of the following conditions are found to exist:

(1) the insurer fails to perform a quarterly review of the sufficiency of the collateral maintained by the insurer to secure the policyholder's obligations to reimburse the insurer for claims paid and credit taken against reserves for each policy up to the negotiated deductible amount;

(2) the insurer issues a MDWC policy that does not state a specific dollar amount of deductible per claim and in the aggregate;

(3) the insurer issues a per claim MDWC policy and fails to include an actuarially supported calculation of the total amounts owed by the policyholder and credit taken against reserves for all amounts, through ultimate loss development;

(4) from the inception of the policy through ultimate loss development, the insurer fails to maintain collateral for 100% of claims paid and credit taken against reserves for each MDWC policy; or

(5) the insurer fails to maintain or produce, upon the Department's request, gross and net premium data and first-dollar loss data for each workers' compensation policy with a mega deductible. Such data must be maintained on a quarterly basis in accordance with, or in a substantially similar format as, the Oklahoma Mega Deductible Workers' Compensation Experience Reporting Form created by the Commissioner.

(f) Insurers shall provide to the MDWC policyholder, documentation separate from the MDWC policy, explaining the financial responsibility of both the insurer to pay all covered claims and the policyholder's obligation to reimburse the insurer for any deductible amounts paid by the insurer.

(g) The insurer shall report statistics under each MDWC policy to a statistical agency designated by the Commissioner. Statistics shall be reported separately for each insured and each coinsured employer. For statistical and ratemaking purposes, all claims paid by the insurer within the deductible amount shall be reported in conformity with 85A O.S. § 95. Subject to applicable law, the instructions for statistical reporting shall be as required by that statistical agency.

(h) This Section applies to MDWC policies issued, delivered, issued for delivery, or renewed on and after the effective date of this Section.

365:15-1-25. Loss runs and claims history

Section 1204.1 of Title 36 of the Oklahoma Statutes requires property and casualty insurers and advisory boards or advisory organizations to make loss runs or claims history available to current and former policyholders within thirty (30) days upon a written request by the policyholder. Any such loss runs or claims history which cover multiple years shall indicate the insurer, policy number, effective date, and date of expiration or cancellation of such coverage.

APPENDIX B. OKLAHOMA WORKERS' COMPENSATION OPTIONAL DEDUCTIBLE ACCEPTANCE/REJECTION FORM [REVOKED]

APPENDIX B. OKLAHOMA WORKERS' COMPENSATION OPTIONAL DEDUCTIBLE ACCEPTANCE/REJECTION FORM [NEW]

Oklahoma law requires insurers issuing a policy under the Administrative Workers' Compensation Act ("AWCA") to offer deductibles, optional to the policyholder, for benefits payable under the AWCA. All deductible options set forth below shall be fully disclosed to the prospective policyholder in writing. The policyholder is not required to select a deductible option. Please carefully review the requirements for the deductible option outlined below.

DEDUCTIBLE OPTIONS

Optional deductibles shall be offered in each policy insuring liability for workers' compensation that is issued, delivered, issued for delivery, or renewed under the AWCA. A policyholder may choose a Small Deductible or Large Deductible, as defined in OAC 365:15-1-3.1, or a Mega Deductible as defined in OAC 365:15-1-3.2.

The Small Deductible options for medical benefits are $500.00; $1,000.00; $1,500.00; $2,000.00; and $2,500.00 per claim. The Small Deductible options for indemnity claims are $500.00; $1,000.00; $1,500.00; $2,000.00; and $2,500.00 per claim. Separate deductibles may be selected by the policyholder for medical benefits and for indemnity claims, for a combined total deductible of not more than $5,000.00.

The Large Deductible options for medical benefits are greater than $2,500.00 but not more than $50,000.00 per claim. The Large Deductible options for indemnity claims are greater than $2,500.00 but not more than $50,000.00 per claim. Separate deductibles may be selected by the policyholder for medical benefits and for indemnity claims, for a combined total deductible of greater than $5,000.00 but not more than $100,000.00.

The Mega Deductible options for combined medical benefits and indemnity claims deductible amounts are greater than $100,000.00.

Please Note: The deductible option selected may include a deductible for medical benefits only; for indemnity claims only; or for both medical benefits and indemnity claims.

EMPLOYER OBLIGATIONS IF DEDUCTIBLE OPTION IS SELECTED

If the policyholder exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for benefits paid for each compensable claim of work injury suffered by an employee. The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical providers entitled to the benefits conferred by the AWCA, and seek reimbursement from the insured employer for the

applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers' compensation in the same manner as payment or nonpayment of premiums.

***WARNING:* The insured employer must reimburse the insurer within sixty (60) days of a written demand. If the insured employer fails to reimburse the insurer within sixty (60) days, the insurer may seek to recover the *full amount* of such claim from the insured employer. In addition, the non-payment of deductible amounts shall be treated in the same manner as non-payment of premiums.**

EXPERIENCE MODIFICATION

Premium reduction for deductibles will be determined before the application of any experience modification, premium surcharge, or premium discounts, and, to the extent that an employer's experience rating or safety record is based on benefits paid, money paid by the insured employer under a deductible as provided herein will not be included as benefits paid.

ACCEPTANCE/REJECTION

[ ] Yes, I have read the optional deductible information outlined above and want the following deductible amount to apply to claims under the AWCA. I understand that this deductible applies to every claim filed by an injured employee.

Small Deductible

	Medical		Indemnity
[ ]	$500.00	[ ]	$500.00
[ ]	$1,000.00	[ ]	$1,000.00
[ ]	$1,500.00	[ ]	$1,500.00
[ ]	$2,000.00	[ ]	$2,000.00
[ ]	$2,500.00	[ ]	$2,500.00

Large Deductible

[ ] Greater than $5,000.00 but not more than $100,000.00 combined per claim

Mega Deductible

[ ] Greater than $100,000.00 combined per claim

If an applicant selects a Large Deductible or Mega Deductible, the specific amount does not need to be indicated on this form but documentation of the terms and conditions must be provided to each employer/coemployer and maintained by the insurer.

I understand that I am responsible for reimbursing my insurance company for the amounts of any deductible it pays on my behalf.

NAMED INSURED: _____

ADDRESS: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

THIS FORM IS NOT A PART OF YOUR POLICY AND DOES NOT PROVIDE COVERAGE.