R.C. 1933

To the Members of the Board

Re: New York Workers Compensation
Manual Rule for New York State Assessment

The Rates Committee has adopted, and the New York State Insurance Department has approved, a revision to the New York Workers Compensation and Employers Liability Manual which incorporates a New York State Assessment rule and a revised miscellaneous values page to reflect the provisions of new legislation regarding the Special Disability Fund.

Recently passed legislation (S. 5275) changes the manner in which private carriers will be assessed for their shares of the Special Disability Fund, effective January 1, 2000. The bill amends Section 15-8h of the Workers’ Compensation Law so that the base for private carrier assessments for the Special Disability Fund will be written premium rather than the present practice of developing assessments on the basis of paid indemnity losses. This change in the assessment process for the Special Disability Fund is in response to a new accounting standard issued by the Financial Accounting Standards Board which requires each private carrier to immediately accrue for future second injury fund liabilities on its financial statements if the fund’s assessments are based on paid losses. By changing the assessment basis to premium, many carriers will avoid the possibility of having to take a charge to surplus to establish the required reserve.

The new Rule IX.L., which is attached, is being introduced since, at the present time, information and instructions for calculating the New York State Assessment charge are only contained on the Miscellaneous Values page of the manual. The new rule contains the current verbiage from that page and also includes references to the treatment of the Special Disability Fund assessment by the private carriers as set forth in the enacted legislation.

A revised Miscellaneous Values page, also attached, has been developed to eliminate some of the previously included general information, which will now be contained in the new rule, and to add language regarding the handling of the assessments on retrospectively rated policies as a result of S.5275. Since the legislation explicitly requires that the policyholder surcharge for the Special Disability Fund be a function of premium, the option to allow the charge on the basis of indemnity losses is being eliminated for private carriers. The option to charge retrospectively rated policyholders on the basis of indemnity losses for the remaining assessments will remain unchanged.
With respect to policyholder charges, the enacted legislation is silent regarding whether or not the Special Disability Fund charge must be shown as a separate charge on the policy information page. Consequently, carriers may continue to include the Special Disability Fund charge as part of the New York State Assessment on the information page except for retrospectively rated policies which reflect the assessment as a function of loss. For retrospectively rated policies using the loss base option, a separate premium charge for the Special Disability Fund assessment must be shown on the information page in addition to the loss based assessments for the other New York funds. Since there are no published statistical codes for either the New York State Assessment or the separate Special Disability Fund, internal carrier codes may be used to record these assessments and for display on the policy information page.

At this time, the assessment charges to policyholders, approved effective October 1, 1999, and contained in the attached manual pages will continue in effect and must be used in accordance with the new manual rule. When the Workers’ Compensation Board calculates the private carrier Special Disability Fund assessments on the basis of premium, these charges will be reevaluated and changed, if necessary.

These changes are effective for new and renewal policies on and after January 1, 2000 to coincide with the effective date of the legislation.

Revised manual pages will be provided in the 2000 edition of the New York manual to be distributed during the early part of this year.

Very truly yours,

Monte Almer

President
L. NEW YORK STATE ASSESSMENT

1. **Explanation.** The New York State Assessment is a separate identifiable charge to policyholders for the funding of the Special Disability Fund, Reopened Case Fund, Workers’ Compensation Board expenses, Special Funds Conservation Committee expenses and interdepartmental expenses associated with the administration of OSHA requirements.

2. **General Information.** The New York State Assessment amount must be displayed as a separate identifiable charge on the policy information page.

   The New York State Assessment amount is subject to change at audit and at all subsequent retrospective rating adjustments.

   The New York State Assessment amount is charged in conjunction with the effective date of the dates used on each policy. Therefore, where the Anniversary Rate Date Endorsement (WC 00 04 02) applies, e.g., when two sets of rates are used, two assessment percentages will apply.

   For policies written under independently filed programs, e.g., large deductible programs, the calculation of the assessment, other than as described in this rule, must be approved by the New York State Insurance Department prior to use.

3. **Basis for Calculating the New York State Assessment**

   a. **Premium Base.** For all policies except those subject to the optional loss base defined in b. of this section, premium must be used as the basis for calculating the policy charge. Premium is defined as premium determined on the basis of Rating Board or authorized (deviated) rates (or percentage premium deviation) plus any applicable territory differential premium, including any experience modification, merit rating factor, minimum premium, Construction Classification Premium Adjustment Program policy credit factor, and surcharges and credits from Workplace Safety Programs. The expense constant, including the expense constant in the minimum premium, the premium discount, as defined in Rule VII, and any credit for participation in the Deductible Program as defined in Rule IX-H are excluded from the determination of the assessment charge.

   For retrospectively rated policies, premium is defined as the retrospective premium, as determined by the applicable parameters of the Retrospective Rating Plan, plus the implied premium discount determined on the basis of standard premium.

   b. **Optional Indemnity Loss Base.** For retrospectively rated policies only, upon agreement between the carrier and the insured, the assessment charge, excluding the charge for the Special Disability Fund, may be determined by applying the appropriate charge as a function of the indemnity losses used in the retrospective rating plan calculation. Expected indemnity losses, defined as a percentage of standard premium, form the base of the initial assessment at policy inception.

   **Note:** For private carriers, in accordance with New York law as set forth in S. 5275, the charge attributable to the Special Disability Fund cannot be made on the basis of indemnity losses. Premium, as defined in a. above, must be used in this case.

4. **Assessment Charge.** The assessment percentages to be applied to each policy can be found in the Miscellaneous Values page of the rates section of this manual.

   **Note:** Legislation requires that the assessment amounts collected from policyholders be considered as premium for tax purposes. Assessment charges contemplate premium tax, but not commission.
MISCELLANEOUS VALUES (continued)

New York State Assessment Charges

General Instructions

Refer to Rule IX-L., Sections 1. and 2.

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<th>Assessment</th>
<th>Code 7370</th>
<th>Code 7711</th>
<th>All Other Classes</th>
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<td>Workers' Compensation Board</td>
<td>0.5%</td>
<td>3.2%</td>
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<tr>
<td>Reopened Case Fund</td>
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<tr>
<td>Interdepartmental Expenses</td>
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<td>0.6%</td>
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<td>Special Funds Conservation Committee</td>
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<td>0.2%</td>
</tr>
<tr>
<td>Total</td>
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<td>6.9%</td>
<td>13.6%</td>
</tr>
</tbody>
</table>

Premium Base

For all policies not retrospectively rated, premium is defined as premium determined on the basis of Board or authorized (deviated) rates (or percentage premium deviation), plus any applicable territory differential premium, including any experience modification, merit rating factor, minimum premium, Construction Classification Premium Adjustment Program policy credit factor, and surcharges and credits from Workplace Safety Programs. The expense constant in the minimum premium, the premium discount, as defined in Rule VII, and any credit for participation in the Deductible Program as defined in Rule IX-H are excluded from the determination of the assessment charge.

For retrospectively rated policies, premium is defined as the retrospective premium as determined by the applicable parameters of the Retrospective Rating Plan plus the implied premium discount determined on the basis of standard premium.

Indemnity Loss Base (Excluding Special Disability Fund)

Alternatively, for retrospectively rated policies only, upon agreement between the carrier and the insured, the assessment charge may be determined by applying the appropriate charge, as listed below, as a function of the indemnity losses used in the retrospective rating plan calculation. Expected indemnity losses, defined as 41.0% of standard premium, form the base for the initial assessment at policy inception.

In accordance with New York law as set forth in S. 5275, the charge attributable to the Special Disability Fund cannot be made on the basis of indemnity losses for private carriers. Therefore, premium for retrospectively rated policies, as defined above, must be used as the base for the Special Disability Fund assessment charge.

Optional for Retrospectively Rated Policies Only

Passenger Seat Surcharge

Applicable in conjunction with Code 7421 "Aircraft or Helicopter Operation: Transportation of Personnel in Conduct of Employer’s Business - Flying Crew" in accordance with the classification footnote instructions........................................... $100 per passenger seat $1,000 maximum per aircraft

United States Longshore and Harbor Workers' Compensation Coverage Percentage

applicable only in connection with Rule XII-D of the Manual .................................................. 110.2%

Volunteer Ambulance Service Company

applicable in accordance with Manual Rule II-F2 .............................................. First Ambulance $7,000 Each additional Ambulance $3,500

For a group policy subject to the provisions of Section 32.2 of the Volunteer Ambulance Workers’ Benefit Law, premium is determined based on a charge for the first ambulance plus the additional ambulance charge for each additional ambulance covered by the group policy.

See Manual rule regarding the application of this charge to antique ambulances.