

## BULLETIN

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R.C. 2267

### To the Members of the Board

#### Re: New York Workers Compensation & Employers Liability Manual New York State Assessment – Clarification

In R.C. Bulletin 2265, dated February 10, 2011, you were advised that the New York Workers Compensation and Employers Liability Manual had been revised to conform to the definition of standard premium for assessment purposes as set forth in Insurance Department Regulation 119.

Since the issuance of R.C. 2265, the Rating Board has received several inquiries regarding how the assessments on retrospectively-rated policies, effective prior to March 1, 2011, should be calculated in view of Regulation 119. In addition, we have received other questions as to whether or not independent carrier filings still apply with respect to the manner of calculating the assessments as of March 1, 2011. To address these matters, the Rating Board recently met with representatives from the Insurance Department and the Workers' Compensation Board. As a result of this meeting, the following clarifications are provided:

- a. For retrospectively-rated policies effective prior to March 1, 2011, the manner of calculating the assessment, as agreed to by the insured and the carrier at the inception of the policy, can continue to be used subsequent to March 1, 2011 in conjunction with retrospective rating adjustments on these policies.
- b. The Insurance Department considers the regulation as having the effect of law, and, therefore, the definition of standard premium, as set forth in the regulation, supersedes any other definition, or manner of assessment calculation, that may be contained in an approved independent carrier filing.

In addition, Page R-69 of the New York manual that was included with R.C. 2265 contained a misprint regarding changes in the New York State Assessment on retrospectively-rated policies. For policies effective March 1, 2001 and subsequent, the New York State Assessment is subject to change only at audit. Changes to the assessment at the time of retrospective rating adjustments are not allowed for these policies. The verbiage of the manual rule has been changed to clarify this intent.

A copy of the amended manual page R-69 is attached for your reference and will be included shortly in the online version of the manual.

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. Code 0932 must be used in conjunction with this charge **for policy submission use only**.

★ The New York State Assessment amount is subject to change at audit.

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

For **all policies effective on or after March 1, 2011**, in accordance with the Fifth Amendment to Regulation No. 119 (11 NYCRR 151-6) standard **premium must be used** as the basis for calculating the policy charge.

### 3. Premium Base for Calculating the New York State Assessment

Standard premium is the only premium base to be used in calculating the New York State Assessment policyholder charge.

(i) For purpose of this rule, standard premium is defined as the premium determined on the basis of the insurer's approved rates, as modified by:

- (a) any experience modification or merit rating factor;
- (b) any applicable territory differential premium;
- (c) the minimum premium;
- (d) any Construction Classification Premium Adjustment Program credits;
- (e) any credit from return to work and/or drug and alcohol prevention programs, including credits under the Workplace Safety Loss Prevention Incentive Program (WSLPIP);
- (f) any surcharge or credit from a workplace safety program, including credits under the Workplace Safety Loss Prevention Incentive Program (WSLPIP);
- (g) any credit from independently-filed insurer specialty programs (for example, alternative dispute resolution, drug-free workplace, managed care or preferred provider organization programs);
- (h) any charge for the waiver of subrogation;
- (i) any charge for foreign voluntary coverage; and
- (j) the additional charge for terrorism, and the charge for natural disasters and catastrophic industrial accidents.

(ii) For purposes of determining standard premium, the insurer's expense constant, including the expense constant in the minimum premium, the insurer's premium discount, and premium credits for participation in any deductible program shall be excluded from the premium base.

(iii) The insurer shall also use the definition of standard premium set forth in Regulation 119, cited above, to report standard premium to the New York State Workers' Compensation Board.