



June 21, 2012

U.S. Department of Labor
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
200 Constitution Avenue, NW
Washington, DC 20210

Re: Request for Information – Stop-Loss Insurance (CMS-9967-NC)

The Self-Insurance Institute of America, Inc. (SIIA) respectfully submits the following to the referenced Request for Information. SIIA's membership includes virtually all stop-loss insurance insurers in the country which makes us uniquely qualified to provide input on this subject matter.

Summary Statement – Stop-Loss Insurance is Not Health Insurance Regardless of Attachment Point Levels

Stop-loss insurance, sometimes referred to as excess insurance, is an indemnity form of coverage intended to reimburse the employer or group health plan for losses exceeding a predetermined level incurred by the employer/plan. The employer/plan is responsible for making all claims payments for services rendered to plan participants regardless of stop-loss attachment point levels. Stop-loss insurers do not make payments to health care providers or individual plan participants. Accordingly, stop-loss insurance should not be confused with health insurance, particularly for regulatory purposes.

Request for Comment #1

How common is the use of stop-loss insurance in connection with self-insured arrangements?

50 - 199 lives = 85% of covered lives
200 - 999 lives = 90% of covered lives
1000 - 4,999 lives = 88% of covered lives
5000 or more lives = 40% of covered lives

Source – HRET/Kaiser Survey of Employer-Sponsored Health Benefits 2011

Does the usage vary (and, if so, how) based on the size of the underlying arrangement or based on other factors?

The use of stop-loss insurance typically correlates with group size; with smaller groups more likely to purchase coverage than larger ones. Smaller groups tend to purchase lower specific retentions and the amount retained by the employer grows in proportion to the number of employees until the point where stop-loss is no longer purchased at all. The financial assets and risk tolerance of the sponsor are additional factors when considering the purchase of stop-loss insurance.

What are the trends?

The proportional use of stop-loss among various group sizes has remained consistent. In terms of overall growth, as the use of self-insurance has grown over the past two decades, the market for stop-loss insurance has expanded proportionally.

How many lives are covered by stop-loss coverage?

We estimate that roughly 48 million people are receiving health benefits through self-insured group health plans which utilize stop-loss insurance. We derive this number by estimating that 140 million citizens get their healthcare from their employers. Then, using the *2011 Kaiser Employer Health Benefit Survey*, Exhibit 10.1, 60% of the 140M are covered by a self-insured plan and then applying Exhibit 10.9 from the same survey, we estimated that 58% of self-insured plans purchase stop-loss insurance coverage.

Is the Affordable Care Act expected to affect these trends (and, if so, how)?

One clear trend is that larger self-insured group health plans that previously have not purchased stop-loss insurance are now considering doing so due to the ACA's requirement that plans do not have annual or lifetime financial limits on benefits, but actual purchases of stop-loss have remained consistent. As healthcare costs in general continue to rise, as probable due to the increased plan requirements included in the ACA, more employers will consider the cost-efficiencies of self-insuring – it is likely that the use of stop-loss policies would increase at a similar rate that the prevalence of self-insurance increases.

Request for Comment #2:

What are common attachment points for stop-loss insurance policies, and what factors are used to determine these attachment points?

As levels of stop-loss coverage are based primarily on the risk-tolerance of each plan-sponsor, there are no industry-wide common attachment points. Other factors that are used to determine attachment points may include: the number of employees and their dependents participating in the health plan, the group's experience, underwriting practices and the prevention and wellness programs the employer has implemented. Larger groups typically include a component of experience rating, where smaller groups often pay premiums based on manual rates.

A plan-sponsor typically sets their attachment point in negotiation with the stop-loss insurer based on a percentage above expected claims. This corridor is primarily based on the stop-loss insurer's traditional offering of 120-125% of expected claims for aggregate policies, but additional options can be made depending on the employer's needs and their financial ability to assume risk.

Typically, business practices of stop-loss insurers do not provide for policies with lower than \$20,000 specific attachment points for the smallest groups. Additional floors are present in the market to make sure that the group purchases a specific deductible that is appropriate for the size and demographics of the employer.

What are common attachment points by employer size (e.g., for plans with fewer than 50, between 50 and 100, or between 100 and 250 employees, and how do these compare to attachment points used by larger plans)?

50 - 199 lives = \$73,824

200 - 999 lives = \$136,719

1000 - 4,999 lives = \$205,210

5000 or more lives = \$301,815

Source – HRET/Kaiser Survey of Employer-Sponsored Health Benefits 2011

What are the lowest attachment points that are available?

It is uncommon to find a plan with a specific attachment point below \$20,000. Aggregate attachment points are typically not set below 110% of expected claims for large groups and 120% of expected claims for small groups.

What are the trends?

As employers' enrollments have remained flat or have been reduced due to the current economic environment, there has not been a material change in the common attachment points desired by employer for both small and larger plans.

Request for Comment #3:

Are employee-level ("specific") attachment points more common, or are group-level ("aggregate") attachment points more common?

Overall, specific coverage is more common. Groups with 50-1,000 lives tend to have both aggregate and specific stop-loss coverage. Groups with more than 1,000 lives tend to only purchase specific stop-loss coverage.

What are the trends?

There has not been any change in recent years in terms of use of specific and aggregate coverage.

What are the common attachment points for employee-level and group-level policies?

As levels correlate to the size and specific demographics of the employer group, there are no common attachment points among the industry as a whole.

Request for Comment #4:

How do insurers work with small employers to integrate stop-loss insurance protection with self-insured group health plans?

Employers usually work with consultants, brokers and/or, Third Party Administrators (TPAs) in order to evaluate the stop-loss coverage options appropriate for each employer.

What kinds of options are generally made available? Are policies customized to meet the needs of different employers?

Stop-loss contracts are written in a variety of ways depending on the wants and needs of the employer, but all policies are designed as a reimbursement mechanism where the employer is liable for the funding of all medical claims. Employers generally work with their broker or consultant and a Third Party Administrator in order to evaluate and select coverage options. The determination of both specific and aggregate attachment points requires the analysis of several group specific parameters such as; group size, financial position of sponsor, claims experience, demographics or other influencing factors. In certain States however, there are limitations on customization as standardized filings are required.

Coverage is customized to provide terms to employers to protect themselves from certain catastrophic financial exposures. These include, but are not limited to: “run-in” and “run-out” types of stop-loss contract options, terminal liability options and aggregating specific deductibles. In addition, corridor options on the aggregate coverage are commonly 125%, but levels can also include: 110%, 115%, 120% and 130%. Some options include “tiered” programs where the group can take on varying categorizes of risk (for example, hospitalization only).

The self-insured plan documents are specifically designed to provide coverage in accordance with the employer’s priorities. Self-insured employers typically customize their benefit plans and the stop-loss policies will follow the employer’s plan documents. .

How are the attachment points for a stop-loss policy determined for an employer?

Plan-sponsors will typically work with the consultant, broker and/or TPA to accurately develop the most appropriate levels, with consideration based in large part to the financial position of the sponsor and the claims experience of the group population. Specific attachment points are in large extent determined based on the size of the group. Aggregate attachment points are usually determined using the employer group’s prior claims experience.

Do self-insured group health plans purchase stop-loss insurance anticipating that they will purchase it every year?

Yes, self-insured group health plans purchase stop-loss insurance anticipating that they will purchase it every year as the coverage is designed to be catastrophic financial protection. As such, an employer can have years without any claims filed under the stop-loss policy and years with significant claim reimbursement. However, employers are allowed to enter and exit the stop-loss market without any restrictions or limitations.

Request for Comment #5

For a given attachment point, what percentage of total medical costs incurred by the employees is typically paid for by the employer and what percentage is typically paid for by the stop-loss insurance policy?

Under ERISA, the plan sponsor is liable for 100% of all claims payments. As such, the stop-loss policy does not pay any medical claim. When claims paid by the self-insured plan exceed the stop-loss policy defined attachment points, the plan then seeks reimbursement from the stop-loss carrier. As stated previously, stop-loss is designed to be catastrophic coverage for the plan, so amounts reimbursed to employers during the year vary based on the severity and frequency of catastrophic medical claims incurred by the plan beneficiaries.

How much do the relative percentages vary for different attachment points?

We can see the impacts of the specific attachment point in the recent Milliman NAIC report Table 1A. This table reflects the probability that an employer offering coverage equivalent to a Silver Plan in a State Exchange at a \$20,000 specific attachment point would likely have 3.34% of the total members of the plan exceed \$20,000 in annual costs. Conversely, this means that an employer would pay 100% of all medical costs on 96.64% of the total member population. The Milliman table does not predict costs, but rather the frequency of plan participants exceeding the stated dollar amount.

When we look at an actual stop-loss carrier's experience, we find that this table related for frequency does not represent the costs in terms of actual dollars reimbursed by stop-loss expressed as a part of the total cost of the plan. We find that at a \$10,000 specific attachment point the dollars become split at a 50/50 basis. Again, this reiterates why stop-loss is not readily available at such a low attachment point. At a \$50,000 specific attachment point the employer is reimbursed 18% of the total plan costs, by the stop-loss carrier. At a \$75,000 specific attachment point the employer is reimbursed roughly 12% of the total plan costs.

What are the loss ratios associated with stop-loss insurance policies?

As stop-loss is a catastrophic liability product that makes reimbursements to the plan-sponsor only for high-cost events, there is great fluctuation in payments from a year-to-year basis; dependent on the number of catastrophic events experienced by the reinsured plan.

Request for Comment #6:

What are the administrative costs to employers related to stop-loss insurance purchased for the employers' self-insured group health plans?

A stop-loss carrier's administrative expenses are included in the premium amount charged to the plan-sponsor and typically range from 5-15% of that amount.

How do these costs compare to the administrative costs related to purchasing a health insurance policy from an issuer?

The premiums for a stop-loss policy typically equate to about 5-10% of the total cost to the plan-sponsor of a self-insured plan. The 5% would be for an employer with average or above average specific attachment points. The 10% would be for groups with lower than average specific attachment points. To equate the administrative costs of the stop-loss policy to the administrative costs of a health insurance policy is not a creditable analysis since the products provide two very distinct forms of coverage with very different intentions on claims frequency, so a comparison of the two products is not an appropriate comparison. With that said, we would roughly estimate that the administrative costs of a stop-loss policy equal about 10% of the administrative costs of a health insurance policy and represent about 1% of the overall plan costs of a self-insured plan.

Request for Comment #7:

Is stop-loss insurance more prevalent in certain industries or sectors?

No. Stop-loss insurance is utilized by a broad cross-section of industries and sectors.

Are there any minimum employee participation requirements for a small employer to be offered stop-loss insurance?

Yes, employer plans with low participation rates (below 80%) are generally not considered candidates for stop-loss coverage. Some stop-loss insurers have slightly higher or slightly lower participation thresholds, but on average, anything below 80% will typically not receive a stop-loss quote.

Request for Comment #8:

What types of entities issue stop-loss insurance?

Stop-loss insurance is issued by insurance companies licensed and regulated at the State level. The policy is an insurance product that focuses on the financial exposure of the underlying employer's plan and which typically must be filed and approved by the State.

How many small entities issue stop-loss insurance policies?

As stop-loss insurance is a product that must meet State mandated solvency and reserve requirements, it is highly unlikely that entities meeting the definition in the Request would issue stop-loss insurance.

Request for Comment #9:

Do stop-loss issuers increase fees for groups below a certain size or exclude those groups? If so, how?

Stop-loss insurers do not charge fees, but charge actuarially appropriate stop-loss premiums. Those premiums will increase as the attachment points decrease and conversely the premium will decrease as the attachment points increase. Other factors such as group size, plan design and geography will influence the premiums charged (due to their effects on attachment point levels). Each insurer, based on their own business practices, determines its own factors (if any) for exclusions of policy issuance.

Request for Comments #10:

How do stop-loss insurers evaluate the plans seeking coverage and how is this evaluation reflected in the coverage or premiums offered?

Most stop-loss underwriting departments assess the size of a group, type of business, age/sex of the population, geographical location, subsidiaries, claims experience, wellness and prevention programs implemented, managed care networks and plan design in order to evaluate risk and coverage options.

Does the profile of the plan have an effect on the attachment points available?

Yes, premiums for all groups begin with a manual rate developed through actuarial assumptions, (demographics, geography, and plan design). Each stop-loss insurer typically makes adjustments to their manual rates based on previously discussed criteria.

Request for Comments #11:

How do States regulate stop-loss insurance?

State regulation of stop-loss insurance is accomplished by each State's insurance regulatory authority and the specific regulations vary by State. In general, the State regulatory body approves the policy prior to use in their jurisdiction. The States' advertising rules and fair trade practices for the business of insurance apply to stop-loss insurance.

Stop-loss insurers are subject to State market conduct activities including State-mandated reports and State examinations of insurers' business practices. Most States also require agents to be licensed to sell stop-loss insurance and require ongoing education and ethics training for them to maintain a license.

In States that are regulating this insurance, what are the licensing processes and standards?

All states regulate stop-loss as it is an insurance product subject to State jurisdiction. Only insurers which are licensed by the State insurance regulatory authority are permitted to market stop-loss insurance policies in the State.

Have States proposed laws, regulations, or best practices with regard to stop-loss insurance?

Approximately half the States have some type of regulation of a minimum specific and/or aggregate corridor or a limitation by group size. It is SIIA's legal opinion that such regulations are preempted by ERISA as they directly affect a plan-sponsor's decisions on plan design.

It is with interest that we review these restrictions, as there is a fallacy that the stop-loss industry targets small employers. As the Kaiser results show, self-insuring among small employers is not prevalent (less than 13% are self-insured) and our industry information tells us that most of the plans that currently have less than 50 lives did not start as a small group.

Again, limiting a small employer's ability to self-insure would have almost no effect on the risk level of the Health Insurance Exchange. In a recent RAND Corporation study, *Small Firms' Actions in Two Areas, and Exchange Premium and Enrollment Impact* concludes, "without the option to self-insure, firms may drop coverage".

Do such proposals focus on attachment points, size of the group, percent of total claims paid by the stop-loss insurer, or other criteria?

Yes, States have, or are attempting to put in place, minimum attachment points for policies sold to small groups. In certain states, these minimum attachment point restrictions are for policies sold to groups of any size.

What are the issues States face in regulating stop-loss insurance?

States are prohibited under ERISA from regulating stop-loss where it relates to the self-insured plan. States can and do regulate stop-loss insurance policies, such as rates and business practices. In areas where regulation is permissible under Federal law, States face the same regulatory issues regarding stop-loss insurance as they face regarding other regulated types of insurance. An additional point of consideration is that stop-loss is not the only risk transfer model that self-insured employers can utilize. An appropriately regulated stop-loss market discourages employers from seeking off shore or non-regulated alternatives, but should the stop-loss market evaporate for smaller employers, many of those employers will seek alternative models that fall out of the preview of State insurance regulators.

As States work to develop regulation for the implementation of the Health Insurance Exchanges, there is a prevailing misconception that allowing small groups to self-insure will create adverse selection within the Exchanges. We see a number of potential issues that must be addressed by the States when considering an approach to limit self-insuring for small groups. First, we would reference the RAND report on “Employer Self-Insurance Decisions and the Implications on the Patient Protection and Affordable Care Act as Modified by the Health Care and Education Reconciliations Act of 2012.” This report reflects our opinion that no material adverse selection is created in the exchanges as long as stop-loss insurance specific attachment points remain at their current common levels. As noted earlier, the stop-loss industry generally has their own minimums and will not offer specific attachment points below \$20,000 since the frequency of claims below such a threshold is greater than what is supported by the stop-loss carrier’s catastrophic claim model.

By attempting to place minimum attachment points that insurers can sell to small groups, a State is in effect reducing the number of employers who will continue to offer coverage. As cited in the study, employers who lose the ability to self-insure generally don’t move to a health insurance product; rather they no longer offer healthcare coverage. Secondly, States must address how to handle small employers who are currently self-insured. There is no adverse selection if an employer was self-insured prior to the creation of the exchange, so will that State force the employer out of their current plan and into the Exchange, and if an employer does happen to continue to offer coverage, what are the costs to do so?

Our opinion is it an untenable position that to force an employer, and their covered participants, out of a plan they currently have would go directly against the President’s commitment that “if you like your plan you can keep it”. Will the State force an employer who wishes to keep their self-insured plan into the Health Insurance Exchange? How does this change if the drop in enrollment is temporary? The back and forth from self-insuring purchasing fully-insured coverage would not be in the best interest of the beneficiaries of the self-insured plan.

Request for Comment #12:

What effect does the availability of stop-loss insurance with various attachment points and other particular provisions have on small employers' decisions to offer insurance to employees?

In certain cases, small businesses are unable to afford fully-insured coverage, but are able to offer coverage to their employees by self-insuring due to the cost-efficiencies it offers. Such employers will only offer this coverage if they are able to limit their risk-exposure. The availability of stop-loss insurance at levels appropriate for a small business allows that employer to provide quality employee benefit coverage options to its employees. Removing this option could hinder the employer's ability to offer a health benefit plan to its employees, and in some instances, could financially damage an employer or put them out of business completely.

Request for Comments #13:

What impact does the use of stop-loss insurance by self-insured small employers have on the small group fully insured market?

Small employers self-funding does not create adverse selection in the fully insured market. Claims data is not readily available to small fully-insured employers. Therefore identification of "healthy" groups is very difficult. Secondly, unpredictable catastrophic claims have significant impact on small groups, changing it from "healthy" to "unhealthy" very suddenly. It is generally believed decreasing market options will not make health care more affordable for smaller groups. The same RAND study came to this very conclusion when they surmised that the option for small groups to self-insure would not negatively affect State Health Insurance Exchanges.

Also, groups choose to self-insure due to benefits such as cost-efficiencies and plan flexibility, not as a means to simply escape the fully-insured market or state regulation. It must also be noted that the sentiment that self-insurance and stop-loss are used to escape PPACA regulations is simply untrue. The handful of ACA provisions not applicable to self-insured plans are geared towards for-profit entities and would be simply unworkable for self-insured plans which are not-for-profit.

Conclusion

Thank you in advance for your time and consideration of our supplied comments. If you have questions, seek additional information or would like to discuss any of our points in greater detail, please contact SIIA's director of government relations, Jay Fahrer, at 202-463-8161 or jfahrer@siia.org.

Respectfully,



Michael Ferguson
Chief Operating Officer
Self-Insurance Institute of America