

June 28, 2012

U.S. Department of Labor  
Office of the 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 Captive Insurance Companies Association ("CICA") is the association representing the captive insurance industry. "Captives" are self insurance arrangements that enable businesses to better control risk and to access the commercial insurance market, when needed. CICA's members are individual captives, companies that employ captives, and service providers, such as actuaries, accountants, attorneys and insurance consultants, who are active in this industry.

This letter will not address the individual questions in the Request for Information. Rather, CICA will focus on those issues raised by the Request for Information of interest to its members.

As stated in the Summary, the information requested relates to "...the use of stop loss insurance by group health plans and their plan sponsors, with a focus on stop loss insurance at low attachment points". Stop loss insurance is universally recognized as an essential component of self insured health plans adopted by employers to provide health coverage for employees. These plans are subject to the regulatory constraints imposed by ERISA. Further, the insurers providing stop loss coverage are subject to state insurance regulation.

When employers assume the risk for the cost of health care for their employees, they almost always obtain stop loss coverage to guard against the risk of catastrophic loss. The duty to pay for the health care resides fully with the employer. However, the stop loss coverage will be designed to limit the employer's financial risk by indemnifying the employer for its costs over an "attachment point", i.e., a predetermined level of expense. Some states have adopted laws or regulations establishing minimum attachment points for stop loss coverage. It is our view that this determination should be made by the employer on the basis of its own risk profile, financial capability, claims history, plan design and other factors.

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It is important to note that these Stop Loss Contracts are not "health insurance". Rather, they are indemnity insurance to cover the liability of the employer to pay the expense of their employees' health care. The stop loss insurer has no legal relationship with, or duty to, anyone other than the employer. Accordingly, all the state laws which apply to health insurers are irrelevant and not applicable to stop loss insurers.

Captive insurers in some cases provide stop loss coverage. The use of captives for this purpose is an important tool for risk managers, whose job is to minimize risk for their employers in the most efficient manner. In this respect, captives can help create economic efficiency in the market. Therefore, it is CICA's opinion that any findings resulting from this Request for Information should encourage the use of stop loss insurance to indemnify employers for their liability in providing healthcare coverage for their employees.

Very truly yours,



Dennis P. Harwick, President  
CAPTIVE INSURANCE COMPANIES ASSOCIATION