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Submitted Via Federal Rulemaking Portal: <http://www.regulations.gov>

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210
Attn: Stop Loss Comments

RE: Request for Information Regarding Stop Loss Coverage

To Whom It May Concern:

The U.S. Chamber of Commerce (the “Chamber”) submits these comments in response to the Request for Information Regarding Stop Loss Insurance (“RFI”), which was published in the Federal Register on May 1, 2012, and issued by the Departments of Health and Human Services, Labor, and the Treasury (“the Departments”).¹ This RFI solicits comments on the use of stop loss insurance by group health plans and their plan sponsors, with a specific focus on the prevalence and consequences of stop loss insurance at low attachment points.² The Chamber is troubled by the questions posed in this RFI and language in the RFI’s “Background” section,³ which imply future regulatory action to limit access to stop loss coverage for small businesses. We believe that such future regulatory action would be detrimental, unnecessary, and improper.

The Chamber is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region, with substantial membership in all 50 states. More than 96 percent of the Chamber’s members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet,

¹ Request for Information Regarding Stop Loss Insurance, 77 Fed. Reg. 25,788-25,790 (May 1, 2012) [hereinafter referred to as “RFI”].

² Pursuant to the request in the RFI, the Chamber is submitting these comments to one of the Departments – The Department of Labor, with the understanding that these comments will be shared with the Department of Health and Human Services and the Internal Revenue Service, as well.

³ RFI, 77 Fed. Reg. at 25,789. “It has been suggested that some small employers with healthier employees may self-insure and purchase stop loss insurance policies with relatively low attachment points to avoid being subject to these requirements while exposing themselves to little risk. This practice, if widespread, could worsen the risk pool and increase premiums in the fully-insured small group market, including the Small Business Health Options Program (SHOP) Exchanges that begin in 2014.”

virtually all of the nation's largest companies are also active members. Therefore, we are particularly cognizant of the problems of small businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. These comments have been developed with the input of member companies with an interest in improving the health care system.

OVERVIEW

The Chamber and our member companies want quality health care to be readily available at an affordable price. The Chamber continues to advocate for health care reform that builds on the current employer-sponsored system and uses market-based solutions to lower costs, improve quality, and protect American jobs and the employers who create them.

Our comments to the RFI will focus on five main points. First, our comments clarify how stop loss coverage interfaces with self-insured health coverage. Second, we highlight the tremendous value and unique benefits that self-insured plans provide for employees, consumers and employers, and the importance of stop loss coverage in protecting employers who elect to offer this valuable coverage. Third, we emphasize that stop loss coverage is a critical tool to protect small businesses who offer health coverage to their employees. Fourth, as the Administration promised, we recall that the law was to build on the employer-sponsored system and allow people to keep the coverage they have, if they like it; any increased regulation of these products would harm the ability to keep these promises. Fifth, we caution the Departments against regulatory overreach and remind the regulators of the statutory language which was enacted, as opposed to that which was considered during the legislative process but not enacted.

For these five important reasons, we urge the Departments to refrain from imposing any additional restrictions on the ability of businesses to self-insure and purchase stop loss coverage. Because stop loss coverage is not health insurance, we will refer to this product as stop loss coverage and not stop loss insurance, as the RFI does.

GENERAL RECOMMENDATIONS

1. *Stop Loss Coverage Reimburses Employers But Does Not Make Direct Payments to Providers*

Stop loss coverage does not make direct payments to providers on behalf of the individual – so to clarify the question under the Solicitation of Comments, section 1: individuals are not covered under stop loss coverage.⁴ Instead, the employer is responsible for making all claim payments for services rendered to plan participants. A stop-loss contract protects the employer against catastrophic losses under the plan. The medical plan established by the employer accepts the

⁴ RFI, 77 Fed. Reg. at 25,789.

responsibility for paying providers' claims for individuals but limits its risk with stop-loss coverage. "Individual employees are not personally insured by the stop-loss carrier."⁵

2. Self-Insured Plans Provide Employers and Employees with Valuable and Unique Benefits

Self-insured plans differ from fully-insured plans in plan function and transparency, as well as in financing and risk allocation. Self-insured plans offer greater information transparency and afford employers greater accuracy in assessing the impact of any wellness programs and identifying the health and productivity programs that benefit employees. These plans also include valuable strategies and programs to help reduce overall claims.

Self-insured plans also offer greater flexibility both in benefit design and in controlling risk. There are significant business advantages to self-insuring because it allows money to be devoted to benefits, controlling claims, wellness programs, managing, and benefiting from investments.

Given that one of the most critical challenges facing our health care system is the unsustainable cost trajectory, it would be unwise to jeopardize the widespread use of products that have been historically successful at reducing premium increases and encouraging employer-sponsored health plans.

3. Stop Loss Coverage is An Important Tool for Small and Mid-sized Businesses

Stop loss coverage not only allows employers of all sizes to take advantage of the benefits of self-insured employee health plans, but more importantly, it protects employers who decide to self-insure from financial crisis. One of the choices employers face in providing health coverage is whether to have a fully-insured plan or a self-insured plan. Many businesses decide to self-insure because it allows for increased flexibility in plan design and the opportunity for improved cash flow and potential savings. Purchasing stop loss coverage does not take away the risk assumed by the employer; it merely protects the employer from these unexpected costs and maintains the businesses' financial stability.

For these reasons, stop loss coverage is critical for many small and mid-sized businesses that depend on the plan flexibility, predictability, and cost control stop loss coverage provides. The availability and accessibility of this product to small and mid-sized business is essential to ensure that these employers can continue to provide their employees with quality health care coverage, maintain and develop their businesses, and create more jobs.

4. Remember the Promises: "Build on the Employer-Sponsored System" and "If You Like Your Plan, You Can Keep It."

There were two promises that were clearly, consistently and repeatedly articulated by the Administration in the days leading up to, and immediately following, the passage of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act

⁵ Understanding Self-Insured Group Health Plans: Solutions For Containing Cost, Published by The Self-Insurance Educational Foundation, Inc , page 6

(collectively referred to as “PPACA”).⁶ First, we were promised “this law will build on the employer sponsored system” and second, that “if you liked your plan, you could keep it.”

Efforts to restrict the ability of employers to self-insure with the protection of stop-loss coverage will undermine both of these promises. The availability of these products is critical to preserve employer flexibility and afford employers the tools to continue to offer the type of coverage that their employees value.

5. *Implement the Law As Enacted*

First, there is no statutory provision in the PPACA that directs the Departments to promulgate regulations regarding stop loss coverage and attachment points. Second, there is no factual basis that – even in the absence of statutory language – such regulation is necessary.

The statute does not prohibit smaller employers from self-insuring and purchasing stop loss coverage. While §1254 does require the Secretary of the Department of Health and Human Services (HHS) to conduct a study, the thrust of this provision is to assess “the risk of [insolvency]⁷”, determine the extent of “adverse selection”⁸ and “potential conflict[s] of interest.”⁹ It does not provide, as the RFI insinuates, that these products in and of themselves need to be further regulated. To the contrary, draft language from prior bills addressing this issue was specifically not included in PPACA. If Congress wanted to specify which employers could self-insure and under what scenarios, Congress would have included statutory language reflecting this, as the Senate HELP Committee did in the Committee’s version of the health care reform legislation. Such language was *not* included in the version of PPACA that was signed into law.

Further, the Chamber finds it very troubling that, in the RFI, the Departments insinuate that they may promulgate regulations based on suppositions without any evidence that a problem exists. Absent two conjectures in the RFI regarding low attachment points¹⁰ and possible adverse selection in the SHOP exchanges,¹¹ there is no factual basis that the concerns mentioned by the Departments will come to fruition. In fact, as the RFI cites, a recent RAND report and a recent article from *Health Affairs* concluded that the effect of adverse selection, “*if any*, is likely to be small.”¹² Since the concern surrounding the potential effect of small employers self-insuring and

⁶ The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010).

⁷ The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §1254(a)(1), 124 Stat. 119(2010)

⁸ The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §1254(a)(2), 124 Stat. 119(2010)

⁹ The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §1254(b)(3), 124 Stat. 119(2010)

¹⁰ RFI, 77 Fed. Reg. at 25,789 “Unless prohibited by State insurance law, an insurer may offer stop loss insurance policies with attachment points set low enough such that the stop loss insurer assumes nearly all the insurance risk.”

¹¹ RFI, 77 Fed. Reg. at 25,789 “This practice, if widespread, could worsen the risk pool and increase premiums in the fully-insured small group market, including in the Small Business Health Options Program (SHOP) exchanges that begin in 2014.”

¹² C. Price, Raffaele Vardavas, Amando Cordova and Federico Girosi, Small Firms’ Actions in Two Areas, And Exchange Premium and Enrollment Impact, *Health Affairs*, 31, no. 2, (2012), available at: <http://content.healthaffairs.org/content/31/2/324.abstract?sid=412e7755-0eb9-4b79-ac32-d39e6c739d0f>; Mark A. Hall, Regulating Stop-Loss Coverage May Be Needed to Deter Self-Insuring Small Employers From Undermining Market Reforms, *Health Affairs*, 31, no. 2 (2012): 316–323.

purchasing stop loss coverage in the small group market and future exchanges is speculative and unsubstantiated, we recommend that at the very least, the Departments delay any actions limiting employer access to stop loss coverage.

CONCLUSION

It is vital to maintain employer choice in plan flexibility by maintaining stop loss coverage as a tool for businesses, especially small and mid-sized businesses, so employers can provide their employees with meaningful health benefits while protecting their business's financial stability. We urge the Departments to continue to work carefully, pragmatically, and cooperatively with the business community to minimize burdens placed on employers and to provide flexibility as employers work to comply with the law. We look forward to continuing to work together in the future.

Sincerely,



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