

July 19, 2012

Honorable Kathleen Sebelius  
Secretary  
US Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Honorable Hilda Solis  
Secretary  
US Department of Labor  
200 Constitution Avenue, NW  
Washington DC 20210

Dear Secretary Sebelius and Secretary Solis:

Attached is the National Association of Insurance Commissioners response to the Request for Information Regarding Stop Loss Insurance published in the *Federal Register* on May 1, 2012. Survey questions were sent to all of the state insurance departments. 20 states responded. Those answers are summarized in this response. In many cases the responses were not uniform. Some of the questions in the RFI were not included in the survey because the questions were more appropriately directed to insurers or self-funded employers. However, we have maintained the numbering order of the questions found in the federal register.

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

Most of the responding states indicated that stop loss insurance is very common in their state; however, many states do not have details about how much stop loss is sold. The NAIC Annual Statement which reports premium collected does not break out stop loss insurance as a separate category. Some states assess stop loss insurers for high risk pools and those states have additional information about the amount of stop loss sold.

- In Kentucky the total stop loss premium volume was approximately \$104,773,104.00.
- In Minnesota, 40.2% of citizens are covered by self-funded employer plans (2008), but it is unknown how many of those lives are also covered by stop loss insurance. Usually only very large employers can afford to go without stop loss insurance.
- North Carolina requires self-funded MEWA health plans to purchase stop loss insurance.
- In Montana there are approximately 30 insurers issuing stop loss insurance and since 2008, there have been 89 new stop loss products filed.
- In Colorado, there were 55 insurers making rate filings.
- In Florida, there were 28 insurers offering stop loss in 2012.

**Does the decision to buy stop loss coverage vary based on the size of the self-funded group?**

In general the answer is “yes;” however, most states cannot provide specific information about this—and are able to make general observations only. Those observations include: only very large employers can afford to go without stop loss insurance; stop loss insurance is usually sold to employers over 50; many stop loss insurers will not accept groups under 50 lives; some states have noted a rise in the number of stop loss policies sold to employer groups under 50—one state noted a stop loss product that was covering small employers with 7 to 12 employees; another state noted that one stop loss insurer was targeting employers with fewer than 5 employees.

**How many individual lives are covered by stop loss insurance in your state?**

Most states do not have this information unless that state has implemented a “per covered life” assessment for stop loss insurance—usually to support the high risk pool.

- In Maine there were 148,443 covered lives reported (but only stop loss insurers with more than \$2 million in premium are required to report);
- Colorado reported 763,784 covered lives;
- North Dakota reported 150,000 covered lives;
- South Dakota reported 85,527 covered lives in 2011.

**Do you expect the ACA to change the number of individuals covered by stop loss insurance?**

Seven states answered “unknown;” six states answered “yes;” two states answered “no.”

- One state observed that certain actuarial studies have opined that healthier employers groups of all sizes may migrate to the self-insured market to avoid compliance with certain parts of the ACA—smaller employers will almost certainly purchase stop loss insurance.
- Another state noted that the elimination of annual and lifetime limits may encourage even large employers to purchase stop loss insurance, and the community rating requirement in the small group market will likely encourage healthier small employer groups to self-fund.

**2. What are common attachment points for stop loss insurance policies and what factors are used to determine these attachment points? What are the common attachment points for employers 1 to 50; 50 to 100; 100-250; 250 and greater?**

No responding state had specific information about the “most common” attachment points for stop loss insurance. Minnesota observed that \$20,000 specific attachment points are common for employers under 100 and \$100,000 specific attachment points are common for employers over 250 employees.

**What are the lowest attachment points available?**

Many states have minimum attachment points that are enforced in various ways when stop loss insurance policy forms are filed. Sometimes those requirements are based on group size.

Most stop loss policies are filed for approval with a range of attachment points. Most states that review stop loss policy forms review for minimum attachment points only.

The NAIC Stop Loss Model Act contains the following minimum attachment points: 110% aggregate and \$20,000 specific attachment point for large employer groups over 50 employees; for groups under 51, the aggregate attachment point must be at least the greatest of: (a) \$4000 times the number of group members; (b) 120% of expected claims; or (c) \$20,000. Minnesota, Florida, and Montana follow the minimum attachment points in the NAIC model.

- Colorado: \$15,000 minimum specific attachment point;
- Kansas: stop loss sold to employer groups of 2 to 50 must have a specific attachment point of at least \$10,000 and an aggregate attachment point of 120%;
- Maryland: specific attachment points may not be less than \$10,000 and aggregate attachment points may not be less than 115% of expected claims;
- Maine: law requires “retention levels that do not have the effect of making the plan an insured plan”; currently applied to require minimum attachment point of \$20,000 for specific coverage and aggregate attachment point of 120% of expected claims;
- North Carolina: appears to regulate stop loss attachment points only for MEWAs. and those vary according to the solvency needs of each MEWA;
- North Dakota: minimum attachment point is \$10,000 specific;
- Oregon: aggregate attachment point of 120% and individual specific attachment point of \$10,000.
- Washington: aggregate attachment point of 120% and individual specific attachment points at least 5% of expected claims or \$100,000, whichever is less.

Many states do not review stop insurance policies for minimum attachment points.

The attachment points in the NAIC Stop Loss Model Act were established in 1995 and have not been updated since that time.

Currently the NAIC is proposing to update those attachment points using an actuarial study of current trends in the health insurance market. That proposal is still under consideration.

**What are the trends regarding attachment points—are they getting higher or lower?**

Most states answered this question as “unknown.”

Some anecdotal observations were made: two states noted that specific attachment points were getting higher for larger groups. At least two other states noted that they have reviewed some stop loss policies with very low attachment points.

**3. Are employee-level (specific) attachment points more common, or are group-level (aggregate) attachment points more common? What is the most common attachment point or range of attachment points for specific? Aggregate?**

Most states are not able to answer these questions because they do not track this information.

Most stop loss insurance policy forms provide both options, with a range of attachment points for each, but insurance regulators do not know what options are ultimately purchased by employer groups.

Two states observed that many employer groups believe that their aggregate claims costs are relatively predictable, once specific coverage is purchased to protect against the largest individual claims. Many stop loss insurers require that specific coverage be purchased before aggregate coverage will be sold because the volatility of aggregate claims is much higher without specific coverage.

Kentucky and Minnesota reported that specific attachments are more common.

The few states that indicated a “most common” attachment point stated either 120% or 125% aggregate.

**5. What are the loss ratios associated with stop loss insurance policies?**

Many states do not collect this information.

Kentucky and Tennessee reported loss ratios of 60% and Colorado requires a minimum loss ratio of 60%.

Other states reported known ranges of loss ratios:

- North Dakota: 65-85%;
- Maine: 65% - 81.25%; and
- Florida: 63.8% to 159.57%.

**7. Are there minimum employee participation requirements for a small employer to be offered stop loss insurance in your state?**

All states answered “no,” except North Carolina, which imposes the same participation requirements required in the fully insured small employer group market.

One state noted that most stop loss insurance policies do contain minimum participation requirements and those requirements range from 42% to 52%, but a few stop loss insurance policies require 100% participation.

**8. What types of entities issue stop loss insurance in your state? What type of license or certificate of authority do they hold?**

Most responding states indicated that both Life and Health and Property and Casualty Insurance Companies issue stop loss products in their state.

Maryland, Washington, North Carolina, and Virginia indicated that only Life and Health Insurers offer stop loss insurance in those states.

Most states indicated that Life and Health companies issue most of the stop loss insurance.

**Does your state have laws requiring a specific type of license?**

Maryland, North Carolina and Washington require stop loss insurers to have a life and health certificate of authority.

Arizona indicates that only Property and Casualty insurers are allowed to write aggregate stop loss insurance in that state.

Montana does not allow surplus lines insurers to issue stop loss insurance.

**9. Do stop loss insurers increase premiums for groups below a certain size or exclude those groups? If so, how?**

Most states replied, “Unknown” to this question.

Five states indicated that they know group size is a factor in rating.

- Maine reviews stop loss insurance rates and indicates that some stop loss insurers file group size factors that charge small employers higher rates than larger groups.
- Maryland also noted that group size is used as a rating factor for stop loss, as well as expected enrollment volatility.
- Minnesota states that many stop loss insurers do not accept employers with fewer than 50 employees.

**11. How do you regulate stop loss insurance in your state?**

Licensing requirements are described in question number 8.

Minimum attachment points (specific and aggregate) are detailed in question number 2.

Any applicable minimum loss ratios are discussed in question number 5.

**What statutes, rules, standards or guidelines (formal or informal) do you apply to stop loss policy form review (other than attachment points which are described in question number 2)?**

All responding states review stop loss insurance forms, except for Arizona. Many states also review stop loss rates.

Some states apply the same form review standards that apply to health insurers.

- Some states apply all the same standards: for instance, if the health plan covers maternity claims and maternity coverage is mandated in that state, the stop loss insurance policies may not exclude maternity claims.
- Other states apply only a few of those standards, such as prohibitions on unfair trade practices and discretionary clauses.
- Montana reviews for gender and marital status discrimination (which applies to all insurance) and for discretionary clauses.
- Some stop loss insurance policies provide that all claims are subject to a separate medical necessity review. If a stop loss policy contains that provision, some states require the insurer to have a utilization review plan on file with the department of insurance.
- North Carolina requires that stop loss insurance issued to small employers must follow all the same legal requirements that are imposed on small employer group health insurers—including rating and underwriting standards.

Other regulatory practices:

- North Carolina also requires a special consumer notice if a stop loss insurer imposes a pre-existing condition exclusion and requires a notice stating that the coverage can be cancelled for reasons other than nonpayment of premium.
- North Dakota imposes a limit of 26 or more employees in a group before stop loss can be issued.
- Maine requires an offer of a 6 month run-out or tail coverage option.
- Colorado does not allow small employer group minimum premium contracts that don't contain the required minimum stop loss attachment points.

Many of the responding states indicated that they have little regulatory authority over stop loss insurance.

**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 health insurance to their employees? A self-funded health plan to their employees?**

Most states did not attempt to answer this question.

However, the following comments are copied directly from the surveys:

“Carriers have been submitting some products that do not have the \$15,000 attachment point and arguing that hybrid products comply – which we have been disapproving. The hybrid products are really High Deductible Health Plans. Carriers have been arguing that products with lower attachment points comply with our law and are being requested by small employers.”

“The lower the attachment points that are available, the less difference there is, from the employer's perspective, between a traditional health insurance plan and a self-funded plan backed by stop loss coverage. With less uncertainty in the cost of the self-insured plan, and with guaranteed issue allowing reentry into the traditional insurance market at any time if loss experience deteriorates or stop loss premiums rise, the employer is more likely to make the decision based primarily on the up-front cost. Since stop loss coverage is underwritten and rated on the basis of risk and experience, while traditional health insurance (in the small group market) is community rated, this makes low-risk employers more likely to self-fund and high-risk employers more likely to buy traditional insurance.”

“We believe it may offer expanded theoretical options, at least some of which are probably not in some small employers' best overall financial interest if it leads such small employers to take on more risk than is appropriate, given other difficulties and challenges in operating small business profitably over time.”

“Stop loss insurance is necessary for a prudent small employer to offer a self-funded plan to their employees as it is a way of managing the risk of a large claim. Without stop loss, most small employers could not bear the risk of a large multi-million dollar claim for an employee or dependent covered under their plan.”

“With the various attachment points and provisions offered in the stop loss market, employers can structure a self-funded plan that limits their risk within predictable range.”

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

Most states did not attempt to answer this question.

However, the following comments are copied directly from the surveys:

“We don't have measurements, but theoretically we believe that it would tend to dilute the overall small group fully insured market, to its detriment, by removing what we believe would be marginally “healthier” small employer groups from the potential pools of each small group health insurer operating in this state. The result, we believe, would tend to be higher risks and small group premiums for the remainder of the market.”

“The availability of stop loss helps more small employers self-fund and manage their risk. Therefore, some groups, particularly healthier groups, find it cheaper to self-fund than participate in the guarantee issue small group market. With

some of the healthier groups self-funding, the remaining groups in the fully-insured small group market pay more in premiums.”

Insurers will “attempt to cherry pick the best risks out of the insured market.”

“Because stop loss carriers are not bound by HIPAA or state small employer laws, healthy groups wishing to self-fund and purchase stop loss coverage would be more likely to be solicited and issued stop loss insurance. There could be a significant adverse effect on remaining fully-insured small employers, a decrease in state premium tax revenue, and avoidance of existing small employer health insurance market reforms.”

**Other miscellaneous comments:**

Many insurers that seek to sell stop loss insurance to small employer groups are also acting as the third party administrator (paying the claims and making the claims payment decisions) for that self-funded health plan. Those insurers also often draft the summary plan documents and health plan description for those employers and handle all other administrative functions, such as COBRA notices, etc. The employer has very little involvement in operating the health plan.

Many stop loss insurers include provisions in their insurance contracts that formerly only appeared in health insurance policies, such as medical necessity restrictions, exclusion of certain types of claims, limits on payment for certain types of claims, discretionary clauses, “waiting” periods, etc. These restrictions do not always match the restrictions found in the underlying health plan and do not always comply with requirements that apply to health plans under state and federal law.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Praeger".

Commissioner, Kansas Department of Insurance  
Chair, NAIC Health Insurance and Managed Care Committee