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New State Restrictions on Stop-Loss Policies Threaten Employer Self-Funding

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Nearly 90% of private health insurance is employment based and almost 60% of those with employment-based insurance are covered by self-insured plans. Beginning in 2014, individuals are mandated to have health insurance coverage and employers of 50 or more employees are mandated to provide coverage. Even without mandates, a large number of employers of all sizes have voluntarily provided coverage to their employees and their families. As noted in the first installment of Saving Private Healthcare Insurance (http://www.orhcnews.com/newsletters/or-dsnodgrass-0513.pdf), a large and growing number of employers have chosen self-insurance as the best vehicle to provide health insurance coverage.

The Affordable Care Act (ACA) recognizes both insured and self-insured coverages that meet certain requirements as acceptable options for satisfying the employer and individual mandates for coverage. Due to favorable cost, quality and flexibility of self-insurance and differing treatment under ACA and other laws and regulations, many with knowledge of health insurance believe that self-insurance will continue to increase as the option chosen by employers. However, as noted in the prior article, there are threats to the ability of employers to choose self-insurance as an option. Self-insured health plans are generally regulated by ERISA (the Employee Retirement Income Security Act of 1974), a federal law that regulates private pension and welfare plans including group health plans. Insured health plans are subject to federal law as well as to the insurance and other laws of each State through regulation of insurance companies and the insurance coverage that is issued in that State. ERISA generally pre-empts the States from directly regulating self-insured group health plans. However, employers and others such as union trusts that sponsor self-insured health plans rely on purchasing stop-loss insurance to manage their risk of both large individual claims as well as the aggregate or total amount of claims in a plan year. The States do have the obligation and authority to regulate insurance companies that sell stop loss insurance and depending on the laws in each State, may have the authority to limit the coverage the stop loss policies offer. While it may seem illogical that a State would limit the amount of coverage an employer could buy to protect the employer's financial well-being and thus their ability to offer self-insured health plans. This, in fact, has happened or is being proposed in a number of States as a way for a State to indirectly regulate or restrict an employer's ability to self-insure.

Employer Stop Loss Insurance is Critical to Self-insurance

As noted, self-insurance is the option of choice for a large and growing number of employer-sponsored health plans. In order to self-insure and still limit total risk, employers of all sizes purchase stop loss insurance. Without stop-loss insurance, few employers of any size would self-insure and this would remove the option that covers the majority of individuals today with employment-based health insurance. California (SB 161 Stop-loss Insurance) is one of multiple states that have proposed legislation that would impose restrictions on stop loss insurance that have the intent to make self-insurance less attractive as an option. Both Colorado and Utah have already passed recent bills that restrict stop loss insurance in various ways. Some of these bills are targeted at employers with 50 or fewer employees, while some also have provisions that impact larger employers. Legislation to restrict stop loss insurance is not the only regulatory threat to self-insurance, but is one of the most prevalent at the state level.

Practical Steps Employers can take to Protect their Self-insurance Option

Given the importance of self-insurance as a means for providing health benefits to a large number of our population, preserving this option should be a priority for employers. In February of this year, The Self-Insurance Institute of America, Inc. (SIIA) announced the formation of the Self-Insurance Defense Coalition (SIDC). SIIA is the county's leading industry association representing companies involved with self-insured health care plans. In addition to SIIA, founding members of the SIDC include:

U.S. Chamber of Commerce

National Association of Health Underwriters

Council of Insurance Agents & Brokers

National Retail Federation

National Association of Wholesaler-Distributors

National Association of Manufacturers

As an employer, you may be a member of one or more of these organizations and can voice your support through these organizations for protecting your option to self-insure your health plan. If you are an employer that is already self-insuring your health plan, you may want to join SIIA and directly support and help protect your self-insurance options through the many activities that SIIA undertakes on behalf of the self-insurance industry. Information is available at www.SIIA.org. As a SIIA member, I am also happy to discuss my experience with this organization with anyone that is interested and can be reached at david.snodgrass@accesstpa.com.

David Snodgrass is the President and CEO of Healthcare Management Administrators (HMA), a regional third party administrator of self-funded health plans. HMA is dedicated to helping its customers improve health and wellbeing through customized benefit plans and innovative support services. Visit HMA at www.accesshma.com.