ACA Tops SIIA Conference Agenda: Insiders Describe Legal Wrangling and Lobbying Strategies

Several industry insiders dissected the Affordable Care Act’s (ACA) impact on self-insured health plans at SIIA’s 33rd annual National Education Conference & Expo in Chicago, whose underlying theme was outsmarting health care reform. Attendees also were urged to become involved in lobbying to preserve their rights in the face of legislative and legal assaults.

The reason federal regulators are so skeptical of self-insurance is that they fear that it will undermine the ACA’s goal of universal health coverage, explained John Eggertsen, an attorney who heads up Eggertsen Consulting, Inc., who noted in a keynote address how ERISA’s focus has shifted over the years from pensions to health and welfare coverage. He also cited a California law with regard to the use of stop-loss insurance that imposes a $35,000 annual coverage limit, alarmed by the potential impact on small self-funded health plans.

Mike Ferguson, president and CEO of SIIA, described ACA implementation rules and amendment legislation, along with stop loss, as top priorities – adding that any unease among regulators over stop-loss captives is rooted in self-insurance serving as the building block of these programs. Rounding out his list of key legislative and regulatory issues were ERISA pre-emption, re-authorization of the Terrorism Risk Insurance Act and improvements to the Medicare Secondary Payer Act designed to streamline self-insured workers’ comp plans.

States are trying to protect their public health insurance exchanges and will do anything in their power to remove perceived barriers to this emerging online marketplace, added Horace Garfield, VP of stop loss at Transamerica Employee Benefits who chairs SIIA’s government relations committee. Given this perception, he said that stop-loss insurance now has a target on its back. One argument used to justify this stance is that self-insured small businesses can always switch to a fully insured arrangement since the ACA’s insistence on guaranteed issue represents a critical layer of protection, according to Garfield.

Eggertsen briefed attendees on one of SIIA’s current legal challenges involving a 1% assessment on the payment of health care bills by insurers and TPAs in Michigan, which initially hoped to raise $400 million, but fell significantly short of that mark at $250 million. He said one administrative challenge has been in self-insured multistate employers having to parse Michigan residents who have sought health care services from those who have moved to other states.

Eggertsen also expressed surprise at the outcome of another court case involving the Travelers insurance company in which the U.S. Supreme Court affirmed 9-0 that a state tax on hospitals did not impose an administrative burden on self-insured ERISA plans or undermine plan design. He called ERISA the single-most litigated employment law.

Attendees learned about SIIA’s 2010 decision to revive its political action committee (PAC) after a period in the 1990s during which it wasn’t considered particularly effective. The PAC’s annual budget is now $65,000.

Jerry Castelloe, chairman of the SIIA PAC board of trustees, recalls a recent meeting with Sen. Kay Hagan (D-N.C.), a member of the Committee on Health, Education, Labor, and Pensions, during which he was the only one of several lobbyists who could actually vote for her.

“I sense that she paid very close attention to what I had to say,” he said. Her reply to his concerns about health care was that the ACA was already helping bend the cost curve downward.

Garfield also briefly reported on another key meeting for SIIA that took place last fall with a senior staffer for Sen. Mitch McConnell (R-Ky.), Castelloe noted a shift toward seeking meetings with more moderate Democrats outside of the PAC’s comfort level. “We are making progress with expanding our reach” to help educate these members about the merits of self-insurance, he reported.

Castelloe admitted that while meetings with regulators and lawmakers can be intimidating, the key to
overcoming fear is the knowledge that SIIA PAC representatives will be the most informed people in the room about self-insurance and related topics. His larger point was that this expertise can be used to educate leaders in hopes of ultimately lifting regulatory burdens.

Casteloe recommended that attendees who are interested in lobbying on behalf of the SIIA PAC to attend the annual legislative conference in the spring to prepare for future meetings with key staffers or leaders on Capitol Hill.

Motivational Presentation

The SIIA conference kicked off with an inspiring, fast-paced, folksy and humorous presentation by best-selling author and motivational speaker Robert Stevenson, who urged attendees to embrace new thinking in a changing marketplace where great ideas routinely go viral.

“Health insurance doesn’t work in America today, but you know that and offer an alternative,” he said. Stevenson, who wrote “How to Soar Like an Eagle in a World Full of Turkeys,” lauded self-insurance for helping businesses tame rising health care costs and achieve more predictable expenditures, citing the story of Harris Rosen, whose hotel and resort chain has been doing it since 1991.

After serving as director of hotel planning for the Walt Disney Co., Rosen now owns seven hotels and has more than 5,000 employees and dependents. He has saved more than $225 million on health care costs since 1991 through self-insurance, according to Stevenson, who added that for every $1 spent on health care, his firm earns an impressive $8.50 return on investment.

“The passion in talking to this guy was mind-boggling,” he recalled, noting that premiums have been flat at Rosen’s company over the past five years, while turnover is just 15% in an industry where the average is in the 150% to 250% range.

Bruce Shutan is a Los Angeles freelance writer who has closely covered the employee benefits industry for 25 years.