On March 23, 2010 President Obama signed into law the Affordable Care Act. The run up to the passage of the ACA was shrouded in mystery as was evidenced by Representative and Houses Speaker, Nancy Pelosi’s infamous comment that, “…we have to pass the bill so that you can find out what is in it.” After its passage the ACA suffered a number of setbacks including enrollment problems with the website, a close call at the United States Supreme Court on the issue of the constitutionality of the law, a religious liberty challenge by Hobby Lobby et al, skyrocketing premiums, missed enrollment targets, deteriorating public favorability and a series of damaging statements by ACA architect Jonathan Gruber.

Going forward, the ACA faces significant challenges including the upcoming United States Supreme Court decision on the issue of whether the law allows the government to provide subsidies to individuals who live in states that chose to not set up an exchange. Other major issues include rising deductibles and copay obligations causing individuals to defer care\(^1\) and double digit percentage premium increases in many markets.\(^2\)
When the ACA was passed, what did you perceive to be the problems that your industry was going to face?

In response to that question, Mr. Clevenger was particularly concerned that the regulations would skew the law in such a fashion to favor a single-payer system. Mr. Clevenger also acknowledged that as the law developed, he believed that it actually came to favor self-funding and to make self-funding of benefits more attractive.

Bob Baisden, President of International Assurance of Tennessee, a managing general underwriter;
Ernie Clevenger, President and Chief Executive Officer of CareHere, a company that specializes in providing on-site health and wellness centers;
Anne Gustafson, the Compliance Officer for Pro Claims Plus, a third party administrator based in Fort Wayne, Indiana.

The questions that were asked were as follows:
- When the ACA was passed, what did you perceive to be the problems that your industry would face going forward?
- What impact has the ACA had on your industry?
- Has the ACA improved business opportunities and how has it done so?
- From your perspective, do you believe that it remains attractive to self-insure employer based benefits in the post ACA environment and why?
- Lastly, as the ACA continues to be implemented what are the biggest challenges that you see for your Industry?

Despite all of these challenges, the ACA is now slightly more than five years old and continues its pathway to implementation. Five years into the ACA, self-insured medical benefit plans continue to provide health benefits for approximately 59% of workers with health coverage. The number of self insured plans is actually increasing in the post ACA environment despite predictions by individuals like former ACA health advisor Ezekiel Emmanuel, MD, PhD that there will be significant shrinkage in the employer based health insurance system in the post ACA era.4

This article looks at the concerns of certain segments of the self-insurance industry in the run up to the ACA, the impact of the ACA on particular segments of the self-insurance industry, the view of whether self-insuring health benefits remains an attractive option in the ACA environment and the challenges that the industry faces in the coming years.

In preparation for this article, four individuals who represent different entities in the self-insurance world were asked a series of questions. The entities were a medical stop-loss insurance carrier; a managing general underwriter; a third party administrator and a company that provides services to self-insured plans. These individuals were asked to respond from an industry specific perspective not a company specific perspective. They were asked to reflect as industry experts and to give their opinions based upon what they perceived to be industry wide perceptions and experiences.

The individual experts who were interviewed for this article were as follows:
- Jay Ritchie, Sr. Vice President, Regulatory and Compliance, with HCC Life Insurance Company, a major stop-loss carrier
- Ernie Clevenger, President and Chief Executive Officer of CareHere, a company that specializes in providing on-site health and wellness centers
- Anne Gustafson, the Compliance Officer for Pro Claims Plus, a third party administrator based in Fort Wayne, Indiana

Mr. Ritchie echoed and expanded on the concerns about the impact of the regulators on self-insurance. He noted that the regulations did not have a sufficient understanding of self-insurance and the ACA did not deal with self-insurance. Mr. Ritchie felt there would be three major problems. The first problem would be whether the core operating model for self-insurance could be preserved once regulations were released. The second issue was the possibility of redefining medical stop loss coverage as health insurance.

Mr. Baisden noted that he was concerned that certain provisions, like the expansion of coverage to dependent children up to the age of 26 would drive costs. He also was concerned that the law would drive people out of the self-insurance market place. Both of these concerns have turned out to not happen. The additional concern of Mr. Baisden and others, that has happened, is that the unlimited lifetime maximums are presenting significant challenges to the stop-loss carriers. Mr. Baisden said the overall cost of reinsuring is skyrocketing and that the unlimited lifetime maximums under the ACA have “opened the vault.” In reality the problem of the unlimited lifetime maximum may be more related to the billing practices of providers that have come about since the unlimited lifetime maximum, more than the unlimited lifetime maximum itself.

Ms. Gustafson indicated that there was concern with how mandates and increased compliance costs would impact the self-insured marketplace. Overall, the consensus is that the major perceived problems related to increased costs, greater administrative burdens and regulatory mischief.
Q: What impact has the ACA had on your industry?

Mr. Clevenger noted that the demand for onsite medical centers has increased substantially due to the increase in number of employers who are self-insuring as well as the additional emphasis on cost containment. Mr. Baisden noted that for stop loss carriers the incidence of million dollar plus claims has substantially increased and the incidence of record-breaking claims is increasing substantially. Mr. Ritchie noted that the market for self-insurance has grown considerably because the ACA forces employers to think about benefit issues. Mr. Clevenger also noted that there have been changes in the brokerage community. Specifically, smaller brokers have decreased in number due to lower commissions and a more sophisticated brokerage has developed when it comes to self-funding. The responses reflected that the administrative costs associated with the operation of benefits plans have increased under the ACA.

Q: Has the ACA actually improved business opportunities and how has the ACA done so?

Mr. Ritchie, Mr. Clevenger, Mr. Baisden and Ms. Gustafson all agreed that the ACA has improved business opportunities for the self-insurance industry. They stated that self-insured plans enjoy greater flexibility than fully insured plans and that the self-insured plans still enjoy the advantage of avoiding state based regulation. The ACA forces employers to consider how they fund benefits and that forced examination has led additional employers to conclude that self-insuring benefits is a viable and attractive alternative. Additionally smaller groups are starting to use self-insurance to provide benefits. This has to be a breath of fresh air for the self-insurance community as in the run up to the passage of the ACA there was significant discussion that the ACA would cause employers to cease providing benefits and simply pay the requisite penalties.

Q: From your perspective do you believe that it is attractive to self-insure employer based benefits in the post ACA environment and why?

The responses were universally positive. Self-insuring benefits, according to the respondents, provides greater flexibility in plan design and use of plan assets. Some burdens of the
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ACA are better managed in a self-insured environment. Additionally, as the promises of cost savings under the ACA are fading, self-insuring benefits becomes more attractive way to manage costs. Mr. Ritchie, Mr. Baisden, Mr. Clevenger and Ms. Gustafson all noted that self-insuring benefits appears to be the most cost efficient and transparent way to provide benefits.

**Q:** As the ACA continues to be implemented, what are the biggest challenges that you see for your industry?

Avoiding the negative potential of the upcoming Cadillac tax was the most common concern relative to future challenges. While the Cadillac tax is not implemented until 2018, with penalties showing up in 2019, it is clear that it is a present concern for the self-insured marketplace. As is often the case with legislation the devil is in the details and the details are in the regulations which are still being developed. Employers, TPAs consultants and others are facing the challenge of designing plans that will meet the requirements of the ACA without triggering the excise tax. The second most prevalent challenge noted concerned medical stop loss insurance.

Two related themes were noted. First, the continuing battle by states to raise the minimum attachment points for medical stop-loss insurance. If attachment points are raised, smaller employers may be priced out of the self-insurance market place. The second theme was the attempt to redefine medical stop loss coverage as health insurance. This could open the door to increased state based regulation and it could negatively impact the protection provided by pre-emption of state law.

The unlimited lifetime maximum continues to pose a significant challenge to the future of self-insurance. One additional challenge was noted. That challenge was that with all of the growth in self-insurance there is the need to manage that growth without compromising the quality of the products being delivered to the employer who chooses to self-insure.

Slightly more than five years have elapsed since the passage of the Affordable Care Act. When passed, there were significant fears about the ongoing viability of employer sponsored self-insured health benefits. Was the ACA an incremental and inevitable step towards a single payer government run system? Would employers cease providing benefits and leave employees to find benefits on the exchanges? Would the expansion of benefits and the unlimited lifetime maximum drive costs so high that employers would cease to provide benefits? Would regulations become so burdensome and complicated that compliance requirements became too burdensome and costly to continue the provision of employer sponsored benefits? All of these represented legitimate questions relative to the sustainability of self-funded benefits.

In light of all of these potentially serious threats to the self-insurance industry, one could be reminded of a scene from the 1993 movie Jurassic Park. In this scene, the scientists are discussing how the dinosaurs in the theme park cannot breed because they have been engineered to be sterile. Professor Ian Malcolm, played by Jeff Goldblum, contests the proposition that the operators of the park can actually frustrate the breeding process. He ends the debate by saying, “Life finds a way.”

Once again, the self-insurance industry has “found a way” in spite of the significant challenges of the ACA. In fact it appears that the industry is not only surviving, but it is actually experiencing, as Mr. Clevenger said, “a fresh interest in self-funding” in spite of the predictions that the ACA would spell the end of employer provide health care benefits.

The major take away from the questions that were asked and answered is that even though the ACA presents great challenges to the continuation of employer based self-insured health benefits; self-insuring health benefits may very well be even more attractive now than it has been at any time in the past. Self-insurance of health benefits is a proven successful method that has withstood many obstacles and challenges and by all indications it will continue to stand the test of time and remain a viable vibrant method for employers to provide excellent benefits for their workforce.

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**References**