INSIDE and OUTSIDE the Beltway

written by Dave Kirby

Oklahoma tax reinsurance program proposal withdrawn; SIIA orchestrated action to prevent stop-loss assessments

Combining resources, SIIA's federal and state government relations team swiftly responded to a proposed federal waiver by the State of Oklahoma requesting flexibility on Affordable Care Act (ACA) requirements allowing for the use of a reinsurance pool funding mechanism, paired with federal funding, to shore up the individual exchange with an assessment on stop-loss policies. SIIA and a number of other business organizations protested the plan as an unfair burden to small- to mid-sized self-insured employer health plans, robbing Peter to pay Paul.

Oklahoma applied to the Department of Health & Human Services (HHS) and the Department of the Treasury for a Section 1332 State Innovation Waiver on August 16, and anticipated rapid approval by September 25 for the 2018 plan year. Oklahoma's hasty effort in pursuing the waiver was subsequently withdrawn on September 29, just four days after submittal of SIIA's comments.

As part of these comments, SIIA President and CEO Mike Ferguson appealed to HHS to remove proposed assessments on stop-loss policies from the waiver application. In addition, SIIA joined with several national employer and insurance industry groups to protest Oklahoma's inclusion of stop-loss to the Centers for Medicare and Medicaid Services (CMS), which has primary decision making on Section 1332 Waiver applications.

"While Oklahoma's waiver process will be resurrected and revised in the future, we have set out our concerns and have laid the strategic groundwork to ensure that stop-loss policies, and essentially employers and employees aren't used as a wallet for other areas of the insurance marketplace," said Ryan Work, SIIA vice president of federal government relations.

The Oklahoma effort took the state's self-insuring employers and service companies by surprise when, in the final week of the legislative session, reinsurance programs and financial details, including assessment on stop-loss policies, were incorporated in a state legislative package. The Oklahoma State Department of Health's log of public meetings lists discussion of the 1332 Task Force federal waiver project for a presentation and Q&A on August 31, two weeks following the state's application to HHS. Earlier information from the state agency covered the concept of a health care reinsurance pool but did not include details on how it would be funded.

By the time the Oklahoma self-insurance community learned of the stop-loss assessment, it was already on the governor's desk. SIIA and the state's self-insuring employers were pleased by Oklahoma's peremptory withdrawal and look forward to working with the state and Oklahoma business to find alternative policy solutions. While SIIA understands state elected leaders' desire to stabilize individual health insurance markets, funding such a proposal on the backs of small and medium-sized businesses does not make sense.


Tom Belding

That point was reinforced by longtime SIIA member Tom Belding of Professional Reinsurance Marketing Services, Inc., of Oklahoma City. *"We won't be taken by surprise again," he said. "Our industry here can work closely with SIIA to carry the message of protecting small- to mid-size self-funding employers' interests to the insurance department and the legislature."*

SIIA's letter to HHS took the position that self-insuring employers receive no support through the ACA structure and should thus not be required to contribute to its costs. In addition, the comments argued that assessments on stop-loss to support state pools could put many employer plans at risk. "Without stop-loss insurance, most small- and mid-sized employers would not be able to sponsor a self-insured health plan at all," Ferguson wrote.

SIIA's position was that Oklahoma's inclusion of stop-loss policies among planned assessment targets is unfair because stop-loss insurance is not health insurance, Ferguson stated. "Stop-loss insurance does not provide insurance coverage to an individual covered by a health plan, nor does top-loss pay health care providers," he wrote. "Rather, stop-loss insurance is a product that a sponsor of a self-insured health plan obtains to provide a financial backstop guarding against catastrophic health care claims."

The industry coalition letter to CMS opposing elements of Oklahoma's Section 1332 waiver was signed by SIIA, the ERISA Industry Committee comprised of many large self-insuring corporations and organizations; the Human Resources Policy Association and the National Association of Wholesalers-Distributors.

That letter stated that Oklahoma's application is preempted by ERISA and should be modified so it will not impact ERISA plans. Further, it projected that Oklahoma's action may adversely affect the use of stop-loss coverage, as well as employer-sponsored coverage: "CMS should not approve a 1332 waiver application that is likely to result in reduced employer coverage, as this could increase the number of uninsured, increase federal deficits by causing more individuals to become eligible for federal health insurance premium tax credits, and reduce the stability of a state's individual market by causing a sudden influx of plan participants."

"The end result at this point is that self-insuring employers who use stop-loss insurance will not be affected during 2018, and that SIIA will have time to advocate against any renewal of Oklahoma's assessment on stop-loss policies for following years," said Adam Brackemyre, SIIA vice president of state government relations. "We also have to be ready to oppose this kind of action by other states as they seek ways to shore up their individual health insurance markets." ■

SIIA members who wish to comment on these points or support the government relations advocacy activities on this issue are invited to contact the Washington, DC, office, (202) 463-8161 or email Ryan Work at rwork@siia.org or Adam Brackemyre at abrackemyre@siia.org.