

OUTSIDE the Beltway

Written by Dave Kirby

Federal PACE Act Defining Small Groups at 50 Reduces Impact of Maryland Stop-Loss Study

Some of the air went out of the Maryland Insurance Administration's (MIA) current study on stop-loss insurance for sponsors of self-insured employee benefit plans when Congress passed the PACE act last year that revised the ACA to allow states to continue defining small employers at 50 head count.

MARYLAND



Following last year's Maryland legislation regarding small

group health plans, MIA was tasked by the legislature to conduct a study of how stop-loss insurance is used by small group employee plans with the goal of establishing "certain protections and prohibitions for small employers," then thought to include groups of up to 100.

Prominently noted in the MIA interim report in December was the fact that the federal PACE Act will keep the definition of small employers at 50 employees for the foreseeable future (early in this process Maryland accepted that it would follow the government's definition of small groups). This eliminated MIA consideration of groups in the 51-100 range and so appears to have greatly reduced the possible

future impact on self-insured plans in Maryland while potentially diminishing the purposefulness of the study. A final report is scheduled to be delivered to legislative committees in October.

"When I read the report I wondered why they didn't just stop the process right there," said SIIA member **Rodger Bayne**, CEO of Benefit Indemnity Corp. of Towson, Maryland.



The report states: *"Since Maryland employers with 50-100 employees will continue to be considered large employers, it does not appear there will be any impactful movement by small employers which would result in adverse selection that would affect the stability and visibility of the small group market."*

That statement seems to preclude the need for further consideration of stop-loss insurance by Maryland lawmakers and regulators but the rule, that once a government bureaucratic process is launched it must be completed, appears to be in force.

The report recounted how thoroughly MIA mined for information about small group self-insured benefit plans in establishing the parameters of its survey. MIA held a series of town meetings around the state and an informational hearing last September (reported in the November issue of *The Self-Insurer*).

The MIA's appetite for data appears not yet satisfied as its report indicates that further information will be invited in a 2016, "data call letter" to be sent to carriers participating in the Maryland small group market. Presumably "carriers" includes stop-loss insurers as well as traditional group health insurers.

Even beyond MIA's data initiative, Bayne of Benefit Indemnity believes that employers and members of the self-insurance industry should continually and without specific invitations express to the regulator their support for stop-loss insurance

as a vital part of self-insurance.

"It's up to people engaged in self-insurance to initiate their responses," Bayne said. "SIIA is working hard along with the Maryland Association of Health Underwriters to support the stop-loss market.

"The longer our industry goes without challenging government intervention, the state becomes more comfortable with the idea of regulating self-funded plans by attaching regulations to stop-loss insurance." Bayne believes that Maryland and other states can or even have edged into regulating self-insurance, which is overtly denied by the federal ERISA law, by regulating the level of risk employers accept (stop-loss attachment points) and the size of self-insured groups.

"The camel's nose has come under the wall of the tent," Bayne says, "and if we allow it to become comfortable there we'll be living with the whole beast." He points to the federal Fourth Circuit ruling in the 90's that self-funded plans are able to buy all the insurance they want without changing their status to an insured plan, therefore should not be subject to interference by the states. "Our industry should forcibly

remind state government about that precedent," he said.

"Our primary concern in protecting self-insurance is that stop-loss insurance does not become regulated as a health insurance product, which it is not,"

said **Adam Brackemyre**, SIIA Director of State Government Relations.

"We take the position that all state minimum attachment point laws or regulations are ERISA violations."

The MIA interim stop-loss survey report has been distributed to SIIA members. Information remains available from Brackemyre at the Washington, DC, office (202) 463-8161 or abrackemyre@siia.org. ■

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