# OUTSIDE the Beltway

written by Dave Kirby


## New Mexico ceases defining Stop-loss as "health insurance" Extension sought for grandfathered plans in NY

The promotionally-described "Land of Enchantment" lived up to its reputation for the self-insurance industry and many small- to-medium-sized employers when the New Mexico legislature decreed that stop-loss insurance for self-insured employee benefit plans would no longer be regulated as health insurance.


NEW MEXICO

The SIIA-backed HB 336 was signed into law this spring and was warmly welcomed by Government Relations Committee chairman Larry Thompson. "We were thrilled about this positive result of advocacy by SIIA and elements of the New Mexico business community," he said.

Thompson saw a corollary between the New Mexico bill and the recent passage by the U.S. House of Representatives of the Self-Insurance Protection Act (SIPA) that would prevent any federal agency from defining stop-loss as health insurance, and which now must also be approved by the Senate. "While we hope for SIPA to also be finally approved, the New Mexico result is certainly a step in the same direction of protecting the ability of smaller businesses to successfully self-insure their benefit plans," he said.

The New Mexico law that becomes effective on July 1 certainly could serve as a model for other states that may be questioning how to regulate stop-loss insurance, in Thompson's view. "This can hopefully serve as a good precedent for other states to follow," he said.

SIIA Vice President of State Government Relations Adam Brackemyre advocated for this law over a multi-year period that found him frequently attending meetings of an industry advisory group in Santa Fe.

"Stop-loss has been defined as health insurance in New Mexico since the early 2000s," he reported. "But recently there was a movement by regulators toward applying traditional health insurers' medical loss ratios to stop-loss policies.

"Through a lengthy review and negotiation with the Office of the Superintendent of Insurance (OSI), it gradually became clear that health insurance loss ratios are not appropriate for stop-loss insurance and we found a mutually agreeable way to fix the problem," Brackemyre said.

*"The tipping point was that the OSI wanted to solve this problem after they were convinced that the state business community wanted stop-loss insurance to remain available,"* Brackemyre said. *"This took about two years to accomplish."*

The OSI included language defining stop-loss insurance as a casualty product and deleting its definition as health insurance as part of an omnibus bill, SB 367. "That wasn't entirely satisfactory because a 150-page bill can encounter opposition on issues completely unrelated to stop-loss," Brackemyre said. "A few of us took the operative sentences of the big bill and had it introduced this session as HB 336. This bill was supported by the industry and the OSI, and then was passed and signed by Governor Susan Martinez."

Brackemyre credits the SIIA-supported lobbyist John Underwood with the bill's smooth trip through the legislature. "He made sure the bill was heard by committees and made it to the floor for votes. As a former legislator, he was well aware of when things needed to happen because the session was only 45 days long," he said.

The new law should bring comfort to employers operating or considering self-insured employee benefit plans, according to Catherine Bresler, Vice President of Government Relations for The Trustmark Companies of Lake Forest, Illinois, which provides stop-loss plans to New Mexico employers.

"This law is particularly important to the many smaller companies that comprise a large part of the New Mexico market," Bresler said. "Regulating stop-loss insurance as health insurance was a significant challenge for sponsors of self-insured plans, and having to meet medical loss ratios would have made stop-loss plans impossible."

## Grandfather Day in New York

It's not on Hallmark's schedule but one "grandfather" was a hot topic during Lobby Day for SIIA members at the New York State Legislature in Albany. The idea to extend for one year the "grandfathered" period of existing self-insured employee health plans covering 51-100 while a permanent legislated fix is being debated was met with initially favorable legislator response.

"Some legislators advised us to request an extension of life for these plans and others responded favorably to the idea," said Robert Melillo of Guardian Life Insurance who was among SIIA members trouping through the historic New York capital. The logic of an extension is based on the legislature's need to wait for its report from Milliman on how employers are using stop-loss insurance, expected next spring. That would leave a short time for final consideration before the present grandfather period expires at the end of next year.

SIIA-supported legislation (A.7077/S.425) would change state law to reset New York's definition of small employer to 50 employees from 100 at present. Under NY law, no "small employer" may be issued a stop-loss policy.

"One co-sponsor of our bill expressed support for the extension and may file an amendment to the bill," Melillo said. "Our visit to Albany proved to us that we need to step up our pace of advocacy, with all SIIA members involved in New York self-insured plans committing to contact their representatives for support."

SIIA members who wish to join the state government relations advocacy team are invited to contact Adam Brackemyre at the Washington, DC, office, (202) 463-8161 or abrackemyre@siia.org.