Emerging Regulation of Low Deductible Stop Loss

Actuaries Club of the Southwest
Houston, TX
November 15, 2012

Agenda

• Definitions
• My Bias
• A Story
• Your Questions
Definitions

- Fully Insured
- Self-Funded or Self-Insured
- Stop Loss Insurance

Prevalence of Self-Funding

Source: Kaiser Family Foundation/Health Research & Education Trust; 2012 Survey
My Biases

• My Company

• My Beliefs

Prologue

• Spring 1943

• Executive Order 9328

• National War Labor Board:
  – To the extent that an insurance and pension benefit inuring to an employee is reasonable in amount, such benefit is not considered as salary.
Chapter 1: Colleagues

• 1869: Paul v. Virginia
• 1944: US v. South-East Underwriters Association
• 1945: McCarran-Ferguson Act

Chapter 2: Adversaries

• “Patchwork quilt” of regulation
• 1974: Employee Retirement Income Security Act (ERISA)
  – Preemption clause
  – Savings clause
  – Deemer clause
Chapter 2: Adversaries

• 1995: NAIC Stop Loss Model Act
  – Minimum Specific Deductible: $20,000
  – Minimum Aggregate Deductible:

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<th>Groups 50 and Under</th>
<th>Groups Over 50</th>
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<td>Greatest of:</td>
<td>110% Expected Claims</td>
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Chapter 2: Adversaries

• American Medical Security v. Bartlett, Ill

• 1999: NAIC Stop Loss Model Act amended
  – Nothing in this act shall be construed as imposing any requirement or duty on any person other than an insurer or as treating any stop loss policy as a direct policy of health insurance.
Chapter 2: Adversaries

- Only 3 states have enacted 1999 Model Act
- Another 18 have regulated stop loss in some way
  - Specific minimums vary from $10,000 - $25,000
  - Aggregate minimums usually do not deviate by employer size and vary from 110% - 125% of expected claims

Chapter 3: Colleagues Again?

- 2010: Affordable Care Act (ACA)
  - Incidental clauses related to self-funding
  - Essential health benefits
  - DOL Annual Study
  - DHHS One-Time Study
Chapter 3: Colleagues Again?

• DHHS Study
  – Compare characteristics of employers, health plan benefits, financial solvency, capital reserve levels, and the risks of insolvency,
  – Determine extent reforms likely to cause adverse selection in the large group market or encourage small and midsize employers to self-insure,
  – Analyze if and why self-insured plans offer less costly coverage, claim denial rates and more

Chapter 3: Colleagues Again?

• DHHS Study predicts self-insurance will increase notably only if:
  – “comprehensive” stop-loss policies become widely available, and
  – expected cost of self-insuring with stop-loss is comparable to the cost of being fully insured in a market without rating regulations.
Chapter 3: Colleagues Again?

• 2012 NAIC Proposed Guideline Amendment
  – Minimum Specific Deductible: $60,000
  – Minimum Aggregate Deductible:

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<td>130% Expected Claims</td>
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Epilogue – Our Broken Health System

• Uninsured: 48.6 Million, 15.7%
  – Most: Texas – 23.8%
  – Least: Massachusetts – 3.4%

• It’s the cost, stupid

• Variations in Medical Practice
Growth in Total Health Expenditure Per Capita, U.S. and Selected Countries, 1970-2008


# Hosp Discharges Per 1000 Medicare Enrollees, Male & Female, Med & Surgical, Hosp Referral Regions

Legend
- No data
- 145.0 - <295.3 (61)
- 255.3 - <319.1 (61)
- 319.1 - <347.1 (61)
- 347.1 - <374.7 (61)
- 374.7 - 459.9 (62)
QUESTIONS