July 7, 2010

Mr. Lou Felice
Chair, Health Care Reform Solvency Impact Subgroup

Mr. Steven Ostlund
Chair, Accident & Health Working Group

Re. IRD018

Dear Chairman Felice and Chairman Ostlund:

I write on behalf of the members of the Self-Insurance Institute of America (SIIA); including employers who self-insure their health benefit plans and industry providers to these plans. Most notably for purposes of these comments, I am writing on behalf of SIIA's stop-loss reinsurance carrier members in response to your group's consideration of recommending stop-loss reinsurance as a compliant entity of PPACA's Medical Loss Ratio provision.

We listened very carefully to the discussion on July 6, 2010 and agree with Julia Philips that there may be definitional issue with the current IRD018. It is important to clarify the difference between reinsurance, insurance sold to another insurance company or health plan, versus stop-loss insurance which is sold to a self-funded employer or Union-sponsored health plans. Reinsurance is a transaction that is appropriate for consideration in your MLR discussions, but stop-loss falls outside the scope of the PPACA and should be intentionally excluded from discussions.

<u>Overview:</u>
The PPACA specifically exempts self-insured health plans from any determined Medical Loss Ratio limitations. Whether or not that plan is reinsured by a stop-loss carrier should clearly not be a determinant of whether this provision applies since the stop loss coverage is a transaction between the employer and the stop loss carrier, as discussed later. PPACA amends the PHSA by defining two types of "Health Insurance" coverage, Group and Individual Stop-Loss does not appear on the named exclusion of PPACA since it does not meet the definition of Group or Individual insurance and therefore cannot be excluded from a definition in which it is not inclusive and therefore outside the scope of PPACA.

<u>How Stop-Loss Works & How it is Used:</u>
In the most general of explanations, stop-loss insurance is completely unlike health insurance by any definition. A number of employers who decide to self-insure their employee benefit plans

choose to purchase stop-loss insurance as a means to cap their risk exposure for their plans. Stop-loss insurance is merely a risk transfer option of the employer used to protect the employer from what the employer determines to be a calamitous loss, which thus allows the employer to provide affordable benefits under its plan.

Stop-loss policies assume no liability for payment of claims for any beneficiary. The policy merely reimburses the employer-sponsor of a self-insured health plan for certain catastrophic sums paid out. There is no remedy right of any beneficiary against the stop-loss carrier and that carrier does not have any liability to any beneficiary, merely to the plan.

Congressional Intent:

The Congressional authorizers of the PPACA limited compliant entities of the MLR provision to "health insurance issuers offering group or individual coverage" with "health insurance issuer" referenced as the PHSA definition. Under any reasonable reading of the established definition, a stop-loss policy acting as liability coverage for an employer-sponsor of a self-insured health plan, issues no healthcare coverage insurance whatsoever.

MLR Compliance Unworkable for Stop-Loss:

Compliant entities of Section 2718 of the PPACA are required to report to HHS their payment for items such as reimbursements for clinical services for enrollees and activities that improve health quality. Again, stop-loss coverage is not responsible for direct payment of any such claims. The self-insured plan (exempted from Section 2718) is responsible for all claims payment. Even in cases of catastrophic claims, the plan, not the stop-loss carrier, is responsible for claims payment. In those instances, the plan seeks reimbursement from its stop-loss carrier after it has made the claims payment.

In practical terms, stop-loss coverage, as a mechanism to protect against catastrophic claims, does not function in a way that makes it reasonable to operate under Medical Loss Ratio limitations. In policy years where the stop-loss carrier's covered employers seek reimbursement for a high number of catastrophic claims; the plan might pay out significantly more than what it had collected in premiums from those employers. In turn, in policy years that submissions for reimbursement for catastrophic claims is low, a plan might pay out a significantly lower amount than the premiums it collected for that year. Therefore any year where that is the case, plans would be in significant violation of the MLR limitations. Stop-loss carriers use such years to balance against the policy years where their reimbursement claims far exceed their collected premiums.

Legal Precedents:

It should also be brought to your attention that there is also significant legal precedent establishing that stop-loss reinsurance is separate than health insurance and should not be regulated as such. Cases such as Travelers Ins v. Cuomo, Thompson v. Talquin Building Pools Co. and Brown v. Grantatelli, are just a few of the many such decisions that declare that stop-loss insurance may not be regulated as a group health insurance plan.

For the practical reasons presented as well as that of the clear intent of Congress, we strongly urge you to limit IRD018 to reinsurance transactions and remove any reference to stop-loss from further consideration

If you believe it would be helpful for any of our points to be expanded upon further, we are more than happy to make SIIA's many industry experts available. To do so, please contact either myself or SIIA's Manager of Government Relations, Jay Fahrer at 202-463-8161.

Thank you in advance for your time and consideration of this important matter.

Respectfully,

Michael Ferguson
Chief Operating Office
Self-Insurance Institute of America (SIIA)