

Self-Insurance World Blog Post – April 25, 2012

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California Previews NAIC's End Game for Self-Insurance

In case you had any doubt about the end game the National Association of Insurance Commissioners (NAIC) has in mind for self-insurance nationally, you simply need to look at what is happening on the left coast.

Legislation is now pending before the California State Legislature that would impose new regulations on stop-loss insurance in such a way that it would effectively eliminate the ability of companies in that state with 50 or fewer employees from self-insuring their group health plans. It does this by prohibiting stop-loss carriers from providing coverage with specific attachment points below \$95,000 and inserting other regulatory hurdles.

We had heard rumors that Insurance Commissioner Dave Jones was developing proposed legislation with a \$40,000 minimum specific attachment point requirement. Now that would have been bad enough, but a highly charitable interpretation of such development could conclude that Commissioner Jones' motive was simply to support common sense health care marketplace regulation.

Such a motive is highly suspect of course, but the fact that he chose to push an attachment point requirement more than is more than three times higher than how any other state currently regulates stop-loss insurance is clearly a brush back pitch to the self-insurance industry, to use a baseball analogy.

And Commissioner Jones did not throw this pitch without direction from the dugout. The NAIC coaching staff likely sent him the signal to bring the heat in order to set the stage for other states to do likewise. California make for the perfect stalking horse due to its size and political composition of the Legislature which generally hostile to the interests of the state's business community.

We should also note that the word on the street is that Commissioner Jones is using his position as stepping for higher public office and is looking for political fights to burnish his image as a serious player.

While the weather is generally nice in California, a perfect storm of legislative and regulatory mischief is indeed brewing. And such a storm could be coming to your state next.

So what's behind all this focus on self-insurance? There are two primary influences at play.

First, it cannot be overstated how much is riding politically for the Obama Administration and many others within Democratic Party establishment at both the federal and level regarding the successful implementation of state health insurance exchanges as mandated by the Affordable Care Act.

As part of this obsession they are trying to stamp out any possible complication and have now latched on to the theory that the growth in the number of smaller self-insured group health plans will create adverse selection in the health care marketplace and there will threaten the viability of the exchanges when they come on-line in 2014, absent the law being overturned by the Supreme Court.

(This blog and other publications have previously addressed why this conclusion is a canard, so we won't revisit the rebuttal analysis now.)

Armed with this concern, proponents of the ACA have positioned the NAIC to ramp up its efforts to clamp down on the ability of employers to self-insure.

While industry observers have been fixated on the NAIC ERISA & ACA Work Group over the past year as it has been looking at updating its stop-loss model act, which presumably would bump up attachment point requirements, this blog is starting think a little misdirection is going on.

Sure the NAIC could at some point come out with an updated model act that would not be favorable to the self-insurance industry but this is slow process. Moreover, keep in mind that these are just suggested laws that each state would need to individually adopt.

It seems more clear that while this model act development process slowly plays out and keeps everyone's attention, the NAIC, through individual insurance commissioner proxies, will simply "bum rush" the self-insurance industry with legislation like what has been introduced in California.

And just in case these insurance commissioners do not feel sufficiently motivated by NAIC orthodoxy, the health insurance industry is happy to provide the necessary nudge, which is the second factor in play on why self-insurance (via stop-loss insurance) is in the regulatory crosshairs. It's no secret that health insurers are concerned about losing market share in the small group market and they are enthusiastically parroting the adverse selection argument to justify new regulation.

The fact that many insurance commissioners and/or the governors they serve receive political contributions for the health insurance industry should also not be overlooked when making the circumstantial case that collusion is taking place among very powerful policy-makers and interest group to restrict the ability of employers to self-insure.

Granted, California's legislation is targeted at smaller employers, which a small segment of the overall self-insurance /alternative transfer marketplace. But make no mistake, the end game of the NAIC is to strangle this marketplace in every way it can and limited encroachments left unchecked will likely lead to more existential threats. Those involved with risk retention groups (RRGs) can certainly attest to this observation.

It's important to understand this as the industry determines how it intends to position itself so it is not on the receiving end of any more brush-back pitches.