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"Legislative Proposals to Improve Health Care Coverage and Provide Lower Costs for Families"
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Chairwoman Foxx, Ranking Member Scott and distinguished members of the Committee, my name is Jay Ritchie and I am an Executive Vice President of Tokio Marine HCC-Stop Loss Group. I also serve as chairman of the Self-Insurance Institute of America, Inc.

Tokio Marine HCC – Stop Loss Group provides coverage for over 3,000 self-insurance employers and Taft-Hartley plans. We are one of the largest providers of medical stop loss insurance for self-insurance plans in the U.S., covering 3.4 million employees and their dependents.

Today, I am testifying on behalf of the Self-Insurance Institute of America (SIIA), a national non-profit trade association representing the business interests of companies involved in the self-insurance marketplace. SIIA and its members strongly support the *Self-Insurance Protection Act* (SIPA) and we thank Dr. Roe for his sponsorship of the legislation, as well as the support of many of you on this committee.

Self-insurance offers employers across the country a platform to effectively and efficiently manage their healthcare expenditures by using both individual employer and benchmarking data combined with effective healthcare systems, to improve outcomes and eliminate waste. The self-insured market is focused on creating cost-effective and beneficial outcomes for employee populations. Self-insurance is not limited to just the private sector. Cities, counties and school district's make up 9% of our total block of business, with another 5% made up of Taft Hartley and collective bargained labor plans.

I will also balance my remarks today by saying that self-insurance is not the right option for everyone. An organization needs to understand the financial requirements because self-insurance is more responsibility than just handing it off to a health insurer. Self-insurance carries additional liabilities and time commitments to ensure the plan is successful, but I feel strongly that every employer should have the right examine their options on how to best finance their employee health care costs

Fully Insured vs. Self-Insured Health Plans

Traditionally, a fully insured arrangement (i.e. health insurance) offers little risk to the plan sponsor, who purchases a policy from an insurance company. The plan agrees to pay a set premium per employee per month and the insurance company pays all eligible claims incurred during the policy period. The benefits of the policy are often predefined based on standardized plan designs and systematic processing. The insurer is the covered entity under the law as the risk taker and therefore governs the plan. This is certainly a viable option that employers have at their disposal.

A self-insured arrangement can include the same services and the same benefits, but the financing of the plan is different. Instead of paying a monthly premium to an insurance company, they fund a claim account that pays for claims incurred under their plan. The employer is now the covered entity for the plan and makes the determinations on plan design and benefits payable. Because the plan

is now the risk assuming entity, they often elect to purchase stop loss insurance to manage the potential of a catastrophic risk and we will discuss that topic in a moment. The biggest difference between health insurance and self-insurance is simple - who owns the funds at the end of the year when budgeted costs are below expectations. In fully insured arrangements it is the health insurer. In self-insurance, it is the plan. Money not spent by the self-insured plan stays with the plan.

A well-run self-insured plan is normally less expensive over time compared to a fully-insured plan. Traditional insurance premiums account for profit and marketing costs that are passed on to the plan in every premium dollar. These profit costs are not applicable to a self-insured plan, which are essentially not-for-profit health plans. In addition, federal law provides self-insured plans flexibility in designing benefit packages that meet the specific needs of plan participants and allows the plan to structure more innovative reimbursement arrangements when warranted

Self-insuring also allows claims to be funded as they are paid, instead of the pre-payment seen in the fully-insured market. A self-insured plan pays health plan costs as they are actually paid to the medical service providers.

Another key point is ownership of health claims data, an extremely valuable tool for plan design benefits. Self-insured organizations own all claims data and can use it to help deliver benefits efficiently while being cost-effective. Self-insured plan sponsors are at the forefront of reducing medical costs by emphasizing wellness programs, including preventative care and chronic disease management. Employer sponsors of self-insurance plans have both the ability and the incentive to create and integrate health risk assessments, prevention and wellness programs tailored to the employer's specific demographic and need. For instance, a tech company with a younger employee population may see that they are having a large portion of their claims in prenatal care, so they could implement a program to ensure proper pre-natal screening and create a new incentive or benefit for mothers to participate in post-delivery mental health screening. While a manufacturing company with an older employee population may want to increase cardiac wellness visits due to an increased frequency of cardiac claims.

Stop Loss is Critical to Self-Insured Plans

Let me also further explain about stop loss insurance. Stop loss insurance may be purchased by self-insured organizations to provide a financial backstop guarding against catastrophic health care claims. While the plan is self-insurance, not every plan can or wants to self-finance large catastrophic claims that can be unpredictable. It is important to note that stop-loss does not insure employees nor do we reimburse medical providers for care, but rather stop loss reimburses a self-insured entity for health care payments they have made that exceed a certain, pre-determined level similar to a liability product. This pre-determined level is also known as an attachment point. These attachment points can either be for a specific plan participant, called specific stop loss coverage, or for total claims paid by the plan, called aggregate stop loss.

Stop loss coverage is not purchased by all self-insurance plans. Very large plans have large enough group populations where even the catastrophic claims become fairly predictable. Stop loss is also a unique product in that the plan decides where it wants to set its specific coverage thresholds. As groups get larger, the specific retention gets larger. For our block of business the average specific deductible is over $140,000. As you can surmise, this means the plans retains a large portion of the day to day risk of the plan and stop loss covers the catastrophic claims. This results in stop loss premiums

being a fraction of the size of health insurance premiums simply because we take a materially different risk than health insurance does.

The requirements of the Affordable Care Act (ACA) have challenged many organizations with self-insurance health care plans and stop loss. For many plans, the removal of annual claims limits and lifetime coverage maximums have led plans to purchase stop loss coverage to protect their plans from large scale claims and ensure financial reserves. If stop loss is defined as health insurance coverage, it will dramatically change the nature of stop loss coverage, potentially leading to few or no carriers in the market, which will drive up the cost and threaten the existence of self-insured plans. By limiting the availability of stop loss, employer sponsors would be forced to move back to a more expensive fully-insured model, passing those costs on to employees and restricting their ability to offer more customized benefits and access to data.

Wellness Programs Under Self-Insurance

Given the higher level of engagement when employers choose a self-insurance option, it can empower them to focus more on employees' health. Many businesses have turned to wellness programs such as smoking cessation, on-site clinics and indoor walking paths to help encourage healthy lifestyles. Disease-management programs have been shown to reduce hospital visits and lower health costs. This emphasis on health supports the employees and helps businesses lower health care costs.

Criticism of Self-Insurance

I would like to address some of the criticisms raised over self-insured health plans, primarily those surrounding small business. The main criticism being raised by opponents is that self-insured plans are not regulated, and are removing important patient protections. These criticisms are patently false. In fact, self-insurance plans are regulated by no less than 10 federal laws, including the Employment Retirement Income Security Act (ERISA) and the Health Insurance Portability and Accountability Act (HIPAA).

Critics have also included the idea of adverse selection, based on the mistaken assumption that small businesses will offer only "bare bones" benefit packages through self-insured plans. There is broad agreement that "bare bones" plans, wherever they have been tried, have failed due to lack of demand. This is because small business workers want Fortune-500 style benefits like those enjoyed by workers in large companies. Also, small businesses must offer benefit options comparable to those offered by large companies if they are going to attract and retain quality employees.

Self-Insured Health Plans under the ACA

Non-grandfathered self-insured group health plans are subject to almost all of the ACA market reforms, regardless of whether stop-loss insurance is utilized or not. Self-insured plans are also regulated under ERISA, HIPAA and the Tax Code, making it important to emphasize that self-insurance does not constitute a regulatory loophole.

Opponents state that self-insurance plans are not subject to all the provisions of the ACA. In fact, the employer is still subject to all the employer responsibilities requirements of the ACA. What the self-insurance plan is not subject to is the insurance company rules that are no longer applicable due to the fact that the insurer is now the plan itself. For example, a self-insurance plan is not subject to the

medical loss ratio rule. Why? Because now 100% of the claims are paid by the plan for health care claims and quality improvements, so a rule that regulates what the insurance company spends on health claims and quality improvements is illogical.

Critics further argue that this trend toward self-insurance, especially in the small and mid-sized employer market segments, will compromise the viability of the ACA Exchanges (in particular, the SHOP Exchanges) because self-insured plans will cover healthy populations, leaving "bad" health risks for the Exchanges. There is no data to substantiate these arguments, and efforts to make it more difficult for employers to self-insure by restricting the availability of stop-loss insurance restricts choice and could lead to more employers discontinuing coverage.

Self-Insurance Protection Act: Strengthening Access to Self-Insurance

The *Self-Insurance Protection Act* would preclude harmful regulatory action that would limit access to stop-loss coverage, ensuring that many groups seeking to self-insure are able to access the necessary tools to do so. Already regulated under ERISA, PHSA and the Tax Code, access to self-insured plans will become further restricted if regulators are permitted to redefine stop loss coverage as health insurance. Doing so would force the market to only purchase stop loss coverage from the ever decreasing health insurance market where the insurer would take full and complete control of the plan. Thus, eliminating the most valuable aspects of self-insurance and restricting plans to a limited amount of options offered only by health insurers. Resulting in self-insurance only being available for the largest corporations and to see it numerous benefits and advantages eliminated for small and medium sized plans.

Stop loss insurance, while clearly not health insurance, is still an insurance product, meaning states still regulate how insurance operates. Certain states have taken action to restrict availability of stop loss based on specific deductible for certain group sizes. While we all acknowledge the responsibility of the state to legislate change for insurance products under their jurisdiction, a federal regulation that would alter the definition of stop loss coverage into a product it is clearly not intended to be would be concerning.

To prevent this, the SIPA simply seeks to amend the definition of "health insurance coverage" under the Public Health Services Act (PHSA), and parallel sections of ERISA and the Tax Code, to clarify that stop-loss insurance is not health insurance. The legislation does not amend the ACA.

Since the passage of the Affordable Care Act, the share of small businesses offering coverage has plummeted to 29%. Among firms who have ended their health benefits programs, half cite cost as the top reason. Throughout this time, self-insurance has been a viable option for some small businesses and the passage of SIPA is needed to maintain that ability.

Conclusion

In conclusion, self-insured employers, consultants, brokers, plan administrators and SIIA members strongly support the passage of the *Self-Insurance Protection Act*, and the ongoing ability of organizations to self-insure with access to stop loss insurance based on their specific needs. Self-insurance provides affordable health coverage to businesses of all sizes, helping many employers access

coverage they may not otherwise have. While self-insurance is not the only solution to accessible and affordable employer health care, it is an essential part of the solution and should remain available. Hard working employees and their families depend on self-insured plans, along with the high-quality coverage they need. Often, that coverage includes access to customized wellness benefits, onsite medical clinics and so forth. We look forward to continuing a constructive dialogue on how to increase access to affordable and competitive employer sponsored health coverage for all businesses.

Thank you for the opportunity to submit this testimony. I look forward to answering any questions you may have.