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## **Why Stop-Loss Insurance is Not Health Insurance**

A White Paper Prepared by the Self-Insurance Institute of America, Inc. (SIIA)

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### **Issue Summary**

As policy-makers consider various ways to regulate how health care is delivered in the United States, a common misperception is that there is no substantive distinction between medical stop-loss insurance (especially policies with low attachment points) and traditional group health insurance. In fact, stop-loss insurance is not the same as health insurance regardless of attachment point levels. Consider the following:

**Stop-Loss Insurance Does Not Cover Individuals** – Unlike traditional group health insurance, stop-loss insurance does not cover individuals regardless of the attachment point. Rather, stop-loss insurance is a form of contractual liability coverage provided to the employer/plan sponsor for catastrophic claims above a predetermined threshold or attachment point.

Stop loss coverage is customized to the plan provider's risk appetite. Many plan fiduciaries intentionally carve out certain benefits from stop loss protection without any impact on the actual benefits provided. Stop loss is a contract between the plan provider and the stop loss carrier and while it encompasses components of actual health plan, it is not required to mirror the plan benefits to operate a successful self funded health plan.

**Existing Regulatory Precedents** – A number of PPACA regulations should serve as a precedent for interpretation that stop-loss is not to be regulated as health insurance. When crafting the rules on plan changes and their affects on grandfathering status the regulators stated that while a change in health insurance carriers would jeopardize the plan's grandfather status, changing stop-loss carriers would not. This is significant for two reasons. First, regulators distinguished that stop-loss is not a health insurance related product as changes to it do not affect the underlying plan. Secondly, in describing allowable plan changes, regulators specifically included stop-loss as a service provider – again, not as a component of the plan itself.

Additionally, upon releasing the rule that dealt with PPACA's Medical Loss Ratio requirements, regulators again exempted stop-loss insurance as a compliant entity. This further shows that Federal regulators are on record distinguishing between, and recognizing, that traditional health insurance and stop-loss reinsurance are separate and unrelated products.

**Legal Precedents** – It is also important to note that there is significant legal precedent establishing that stop-loss reinsurance is separate than health insurance and should not be regulated as such. The following

are just a sample of existing legal precedents articulating that stop-loss is a separate and different product than commercial health insurance:

- *Travelers Ins. Co. v. Cuomo*, 14 F.3d 708,723 (2nd Cir. 1993) - (“Unlike traditional group health insurance, stop-loss insurance is akin to reinsurance in that it does not provide coverage directly to plan members or beneficiaries. Rather, most stop-loss policies provide coverage to the plan itself if the total amount of claims paid by the plan itself exceeds the amount of anticipated claims by a specific sum.”)
- *Thompson v. Talquin Building Pools Co.* 928 F.2d 649, 653 (4th Cir. 1991) - (“The purpose of the stop-loss is to protect [the employer] from catastrophic losses, it is not accident and health insurance for employees. Instead of covering employees directly, the stop-loss insurance covers the Plan itself.”)
- *American Medical Security Inc. v. Bartlett*, 111 F.3d 358, 360 (4th Cir. 1996) – (“Stop-loss insurance provides coverage to self-funded plans above a certain level of risk absorbed by the plan. It provides protection to the plan, not to the plan's participants and beneficiaries, against benefit payments over the specified level, called the attachment point.”)
- *Brown v. Granatelli* 897 F. 2d 1351, 1353 (5th Cir. 1990) – (“Holding that stop loss insurance is not "accident or sickness insurance" as defined in Texas statute. (Read literally, the stop-loss insurance policy purchased by the Plan is not an individual or group policy since it does not benefit individuals.”)