



Self-Insured Plans

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Low Attachment Points May be Prohibited

Employers may opt to have a self-insured plan rather than an insured plan for various reasons including avoiding the health insurer fee, avoiding state premium tax, and having flexibility in design (e.g., not having to cover state mandated benefits). Employers who face large fluctuations in claims frequently seek to reduce this risk by purchasing stop-loss insurance with low attachment points (e.g., a \$5,000 specific deductible/\$100,000 aggregate deductible).

Use of stop-loss insurance with such low attachment points effectively gives nearly all the risk protection of a conventional health insurance policy without the consumer protections of an insured plan. Low attachment point stop-loss insurance also has the potential to create adverse selection in the risk pool and increase premiums in the fully-insured small group market, including in the Small Business Health Options (SHOP) Marketplaces, by encouraging small employers with healthier employees to self-insure and thus increasing the proportion of less healthy enrollees in insured coverage. This issue has prompted some states to consider measures for protecting the viability of their health insurance markets.

Self-funded group health plans are generally regulated by federal law only and state insurance laws are deemed to be “preempted” by ERISA. As states seek to restrict the use of stop-loss insurance with respect to self-funded group health plans, the question has been raised as to whether the state insurance laws would apply and allow the stop-loss restrictions or if ERISA preemption would prohibit a state from limiting the use of stop-loss insurance as a means to manage risk by employers that self-fund their group health plans.

In Technical Release 2014-01 issued on November 6, 2014, the DOL expressed its view that states may regulate insurance policies issued to plans or plan sponsors, including stop-loss insurance policies, if the law regulates the insurance company and the business of insurance without contravening the ERISA preemption doctrine. In the Department’s view, a state law that prohibits insurers from issuing stop-loss contracts with attachment points below specified levels would not be preempted by ERISA.

For the Technical Release, visit:
<http://www.dol.gov/ebsa/pdf/tr14-01.pdf>