

From: [Jen Brown](#)
To: [E-OHPSCA-STOPLOSS.EBSA](#)
Cc: ["Jen Brown"](#)
Subject: Stop Lost Comment
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I am an attorney who assists injured parties. In each case I have to deal with alleged subrogated carriers.

As to your notice seeking comments about Stop-Loss Insurance and Stop-Loss Insurers. The stated purpose of the notice is to,

request for information regarding the use of stop loss insurance by group health plans and their plan sponsors, with a focus on the prevalence and consequences of stop loss insurance at low attachment points. Given the limited nature of data available, the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments) invite public comments via this request for information.

I concur with my learned colleague Professor Roger Baron, that:

"In the context of ERSIA reimbursement, stop loss insurers seek refuge under ERISA preemption to give them unfettered access to subrogated recoveries.

Much of the ERISA Reimbursement recoveries is paid directly to stop loss insurers and is of no benefit to the ERISA participants and beneficiaries.

This violates ERISA's anti-inurement provision. And, in the process of gathering this subrogated recovery, the effort is maintained in the name of a so-called "self-funded" plan. Please keep in mind that "self-funded" does not mean "self-insured." Collection agents like Rawlings, Ingenix, ACS, and Anthem will not reveal stop loss insurance coverage upon inquiry and most plan administrators also refuse to do so. Furthermore, if a TPA or claims administrator is also providing stop loss coverage, the existence of stop loss coverage does not have to be revealed on the form 5500."

I am hopeful that DOL will seek to have full disclosure of its existence

Thank you.

Jen

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