July 2, 2012

The Honorable Hilda Solis
Secretary, United States Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Submitted Electronically via E-OHPSCA-STOPLOSS.EBSA@dol.gov

Re: Request for Information Regarding Stop Loss Insurance

Dear Secretary Solis:

I am writing on behalf of The National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, consultants and employee benefit specialists nationally. We are pleased to respond to your request for information about the stop loss insurance marketplace for employers seeking to provide health benefits to their employees. The members of NAHU work on a daily basis to help millions of individuals and employers with their health insurance coverage needs and a significant portion of our membership helps employers develop and administer self-funded health plans for their employees. As such, we are happy to share our experiences with you with regard to this market.

First of all, we want to clearly state that the decision whether or not to offer employee benefits through a self-funded arrangement, as well as the decision of whether or not to purchase stop loss coverage and the type of stop loss coverage that may be purchased, is a highly variable decision that depends on the unique needs of each employer. While many of our nation's largest businesses use self-funded arrangements to provide coverage, not all do. The appropriateness of a self-funding arrangement is not determined by the particular size of an employer group. While group size is one factor that an employer considers in the self-funding determination process, it is only one of many. A smaller employer with significant cash reserves might be much more suited to a self-funding arrangement than a company five times its size in a different financial position. An informed decision to self-fund is not based on the perceived youth or health of the employer group's risk pool either. While claims experience certainly plays a large part in the costs of and decision-making process surrounding self-funding a health plan, there is no way for an employer to gauge for certain the long-term health of a group of varying employees and is why many employers elect stop loss coverage.

There are many benefits to self-funding, including the ability to create plans that address the specific needs of the workforce and the ability to incorporate unique and often cost-saving features that employees truly appreciate such as work-site clinics, significant wellness initiatives and disease management programs, among others. However, there are risks an employer must absorb too. When making the choice to both self-fund a health plan and purchase accompanying stop loss coverage, each individual employer must weigh their ability to spread risk, the needs of their employees, their company's specific financial position, their risk-tolerance, their administrative capabilities and many other factors.

We recognize and appreciate that this inquiry may stem from the desire to protect small employers from inappropriate financial exposure. As licensed benefit professionals we share your concern and extend it to our employer clients of all sizes. Our members have a legal obligation to explain all possible benefit plan options to their clients and educate them about the risks and advantages of each type of plan design. State-licensed agents and brokers are also legally responsible to protect their clients and develop benefit plans that best meet their client's financial and coverage needs. As an association, we have significantly increased our professional development offerings regarding self-funding and stop loss coverage options in recent years.

NAHU members do report an increased interest in the self-funded arena from employers of all sizes since the passage of the Patient Protection and Affordable Care Act (PPACA), although interest in the marketplace does not necessarily translate into an increase in the number of self-funded groups. We believe that the new awareness of the self-funded and stop loss marketplace stems from anxiety on the part of most employers about the changes the new health law may bring to their employee benefit offerings. This same anxiety is causing employers to consider dropping their coverage altogether as well as investigate any other new means of providing coverage to their employees that the private market may offer.

With regard to some of your specific questions about stop loss coverage, our expert members report that attachment points are typically set between 110-125 percent of expected claims. Sixteen states currently prohibit stop loss policies from being sold with attachment points that are too low. Attachment points do not necessarily vary due to the size of the group, but instead are generally based on aggregate claims plus trend. Many larger employers with fully credible claims experience elect not to "carry" aggregate stop loss protection. However, employee and COBRA premiums are based on aggregate factors regardless of the group size, so all self-funded employers set aggregate factors in order to determine their COBRA rates and their employee/employer contribution amounts.

In general, self-funded employers tend to be more generous than average when it comes to premium contributions for the employees. Since plan designs can be adapted to accommodate claims and the unique needs of the workforce, employers may be more apt to pay more towards overall employee premiums and may adjust coverage so that employees have more benefit cost-sharing.

While there may be greater interest in self-funding and stop loss plans among small employers at the current time than there has been in the past, this type of coverage is still relatively rare amongst small employers. Most stop loss carriers do not offer stop loss coverage to groups of under 50 lives, although a few do market to groups of 25-50. The majority of stop loss carriers nationally focus on groups of 100 or more lives and some even set a minimum deductible level because claims experience generally is not considered stable enough or "credible" for smaller employer groups. While some claims credibility may be given to smaller groups, it will take the group growth's both in the number of lives covered and months under a self-funded arrangement for more weight to be given to the group's claims credibility. Then attachment points can be based on the aggregate claims factors plus the overall employee benefit marketplace "trend." However, as the market changes over the time, we expect that carriers may develop new products that offer greater protection to smaller employer groups.

The decision to self-fund coverage is not one to be taken lightly by an employer of any size and represents a multi-year commitment. Just for administrative reasons alone, an employer would not be able to hop in and out of the self-funded market on a year-to-year basis. The choice to self-fund means that the employer has absorbed a big administrative obligation, as it involves working with a third-party administrator, a case manager and taking on significant compliance responsibilities. Additionally, due to the way self-funded contracts are normally arranged, with a one-year contract an employer will have really only purchased nine months of coverage due to lag times.

As you noted in your request for information, self-funded employer groups are not subject to state-level insurance regulation and are instead subject to your department's federal regulatory authority as per the Employee Retirement Income Security Act (ERISA). However, the stop-loss policies that almost always accompany a self-funding arrangement for small employers are regulated by state-level departments of insurance. As your request also points out, the National Association of Insurance Commissioners (NAIC) does have a state model law to regulate the stop loss market for small employers through the use of attachment points in setting coverage. As you are probably aware, the NAIC is currently undergoing an effort to revise and update its model law on this topic. The NAIC's process in this effort so far has involved consulting with industry experts and independent actuaries and has allowed for public comment. The NAIC's extensive model approval process also gives insurance regulators from all states and territories opportunities to share their considerable market expertise. Once the NAIC model process is completed, state regulators then have the chance to work with state legislators and their Governors to find the best means of protecting the insurance consumers from their states who might be inclined to purchase stop loss coverage through this market.

NAHU strongly recommends that the Departments of Labor, Treasury and Health and Human Services allow the NAIC process to work with regards to updating the national stop loss model. We further recommend that you allow state insurance regulators, who are the experts in both their field and in the unique market variances of their states, to take the appropriate actions and regulate stop loss policies sold in their states as they feel is warranted.

Part of your inquiry asked for information about trends in the stop loss marketplace and asked what motivates small employers to consider offering benefits through a self-funded arrangement coupled with a stop loss policy. NAHU members have been working with state-level policymakers on insurance market reforms for decades. In our experience, increased interest in self-funded arrangements on the part of employers both large and small generally comes when an insurance marketplace is facing a time of great change. Such interest is exacerbated when factors like coverage pricing, plan design and employer flexibility appear to be uncertain. At the state-level, significant insurance market reforms are often phased in over multiple years to avoid insurance market instability and allow for unintended market consequences to be worked out. However, PPACA calls for an unprecedented number of insurance market changes and employer requirements to take effect all on January 1, 2014.

As we stated earlier, our membership reports almost universally that the looming PPACA-related market changes are causing significant anxiety within the employer community. Employers large and small are looking at all possible ways to gain greater control over their employee benefit options. We believe this need for control has sparked a greater interest in the possibility of self-funding amongst the small and mid-sized employer community. Similarly it has sparked new interest by employers large and small in unique means of providing coverage such as through PEOs or defined contribution arrangements. It's also causing employers of all sizes to weigh the possibility of dropping coverage altogether.

NAHU believes the most helpful thing that the Department of Labor, and the Departments of Treasury and Health and Human Services could do at this point to ensure insurance market stability in the face of PPACA implementation is to work with our nation's employers, insurers and licensed health insurance agents and brokers to relieve anxiety and provide a reasonable transition period. Assuring employers that there will be grace periods and phased-in enforcement of requirements as the entire country adjusts to the insurance market and benefit changes this law will bring would be extremely appropriate. Transition relief as the new requirements under PPACA become effective in 2014 will be essential to preserving the existing system of employer-sponsored coverage.

Employers also need more concrete information about their responsibilities and options under the law, as well as a clear timetable as to when they can expect additional finalized information to be released. Every day our members encounter employers with questions and concerns about their future roles and responsibilities with regard to the new health reform law. We are increasingly concerned that formal guidance or rules on many aspects of this law that touch the employee benefit community have not been issued. Our nation's employers and their benefit professionals need practical and workable final guidance about the full range of employer responsibilities and coverage choices under the new law. Wee need this direction as soon as possible so that we can make informed, long-term decisions about employee benefit offerings.

NAHU sincerely appreciates the opportunity to provide information to your department, as well as the Departments of Treasury and Health and Human Services. We look forward to working with you on this and other issues as PPACA moves forward. If you have questions, or if we can be of further assistance, please feel free to contact me at 202-595-0787 or jtrautwein@nahu.org. Alternatively, you may wish to contact our senior vice president of government affairs, Jessica Waltman, at 202-595-3676 or jwaltman@nahu.org.

Sincerely,

Janet Trautwein

Janet Trautwein, Executive Vice President and CEO
National Association of Health Underwriters