# Self-Insurance Industry Fights Back

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A push to limit employers' access to stop-loss insurance has picked up steam, amounting to one of the biggest battles facing the industry in years.

Stop-loss insurance is state-regulated, and in the last year the topic has come up in legislatures across the country. By the end of 2013, four states had passed laws restricting stop-loss in one way or another.

Self-insured employers pay for most worker health costs directly. Stop-loss allows these employers to protect themselves from bigger claims that could wipe them out. About 60 percent of insured American workers are in self-insured plans. Most of these workers are either in unions or employed by larger companies.

In April, Utah passed a law that included a provision saying that stop-loss insurers must cover incurred and unpaid claims if a small employer plan terminates. That's "an unprecedented requirement," according to Adam Russo, an attorney and the founder of the Phia Group, a Braintree, Mass., health insurance cost-containment consultancy.

In May, Colorado passed a law increasing the amount of money that a self-insured business must spend on health care for each employee before it can tap into stop-loss policies.

Rhode Island followed suit in June with a law restricting stop-loss insurance polices.

Finally, in October, California Gov. Jerry Brown signed a law that includes the requirement that stop-loss insurance purchased by a business cannot exclude any employee from coverage regardless of medical history. The law does grandfather in any such plan that was in effect up to Sept. 1, 2013.

Self-insured plans are exempt from several provisions of the Patient Protection and Affordable Care Act. Some health policy watchers have suggested that small employers with the lowest claims might try to cut their premiums by switching to self-insured plans. Regulators worry that could leave traditional insurers with the sickest, oldest employers and undermine a key goal of healthcare reform: to lower premiums by pooling together more healthy and sick workers.

The Self-Insurance Institute of America, the industry's main lobbying organization, argues that states should not be enacting laws which regulate stop-loss policies as health insurance policies because "stop-loss insurance … does not provide coverage to individuals. Therefore, classifying it as health insurance is clearly a stretch."

As the fight unfolds, members of the recently formed Self-Insurance Defense Coalition are campaigning to make sure stop-loss insurance doesn't end up being redefined as health insurance.

As part of that effort, the Self-Insurance Protection Act that was introduced late last year by Rep. Bill Cassidy, R-La., and Sen. Lamar Alexander, R-Tenn. The legislation seeks to clarify existing law to ensure that federal regulators cannot re-define stop-loss insurance as traditional health insurance. Such a designation, they say, could force many self-insured entities that retain stop-loss insurance to discontinue their health plans.

If passed by Congress, the law would merely amend the Employee Retirement Income Security Act to exclude from the definition of health insurance coverage certain medical stop-loss insurance.

SIIA and other supporters take pains to point out the legislation does not amend the Patient Protection and Affordable Care Act and it does not direct the administration to implement the law in a specific way. Rather, it is “intended to ensure that small- and mid-sized private sector employers, as well as smaller Taft-Hartley Plans and public sector entities, are able to continue to provide quality health benefits to their workers and members through self-insured group health plans,” the statement said.

SIIA President and CEO Mike Ferguson said that “given the current disruption we are seeing in the individual health insurance marketplace due to how ACA implementation rules were crafted, the timing of this legislation is particularly important in order to prevent a similar scenario in the self-insured group health marketplace.

“This is one segment of the market that works particularly well for both plan sponsors and plan participants, so it should be in everyone’s interest that Congress moves proactively to address this uncertainty.”

SIIA Government Relations Coordinator Kevin McKenney said the institute is  concerned that although a new rule-making process related to self-insured plans has not been announced, “they might be gearing up for new round of regulation.”

He noted that in a letter to Congress in August, HHS Secretary Kathleen Sebelius confirmed that the department is “interested in the possible effects of self-funded arrangements with stop-loss insurance on the risk pool and premiums in the fully-insured small group market.”

“We think the federal government … might try to redefine health insurance to include stop-loss, in order to be able to regulate it,” McKenney said.

This spring, the National Association of Insurance Commissioners plans to release a white paper on the subject to help lawmakers and others better understand stop-loss.