



State of New Jersey

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BULLETIN NO. 20-30

**TO: ALL AUTHORIZED AND ADMITTED INSURANCE CARRIERS
WRITING STOP LOSS INSURANCE TO LARGE EMPLOYERS**

FROM: MARLENE CARIDE, COMMISSIONER

**SUBJECT: STOP LOSS (or EXCESS RISK) INSURANCE FOR LARGE EMPLOYER
GROUP RETIREES ENTITLED TO MEDICARE**

The Department of Banking and Insurance (“Department”) has received inquiries regarding the scope of application of the amended definition of “stop loss or excess risk insurance” for large employers in N.J.A.C. 11:4-40.2, effective August 21, 2017, to stop loss policies for large group employer retiree medical plans, specifically to retirees who are entitled to Medicare.

Stop loss is a form of insurance purchased by employers who sponsor self-funded employee health benefits plans to control and predict costs of the health-related claims of their employees. Stop loss insurance is issued to and covers the employer, rather than the employees, even though the employee’s action or claim under the health benefits plan triggers the payment of a claim under the stop loss policy. The fact that the stop loss insurer has no coverage relationship with or obligation to the employee is a key distinction between direct coverage (such as a group health insurance policy, which offers certificates of coverage to employees) and “third party” coverage such as stop loss.

New Jersey law requires individual and aggregate attachment points for stop loss policies issued in connection with self-funded employee medical plans. See N.J.S.A. 17:27A-17 for the small employer market and N.J.A.C. 11:4-40.2 for the large group market. Most relevant here, stop loss or excess risk insurance for large employer groups means “insurance designed to reimburse a self-funded arrangement for catastrophic and unexpected expenses exceeding specified per person retention limits of no less than \$20,000 per year and/or aggregate retention limits of no less than 110 percent of expected claims per year, wherein neither the employees nor other individuals are third-party beneficiaries under the policy, contract or plan.” N.J.A.C. 11:4-40.2. The purpose of these attachment points is to ensure that the stop loss claim liability limits are not set so low that payment by the stop loss insurer is an actuarial certainty so that the stop loss insurance effectively becomes a high deductible health benefits plan. If this was permitted, New Jersey employees could be unfairly deprived of protections – such as benefit mandates and minimum coverage requirements - that exist under New Jersey law and the Affordable Care Act.

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See e.g., N.J.S.A. 17B:27-46.1 to 46.1qq (Group health benefit plan mandates); N.J.A.C. 11:22-5.1 to -5.11 (Minimum standards for all health benefit plans); N.J.S.A. 17:27A-17 to -56 (Small Employer Health Coverage Program), N.J.A.C. 11:21 (SEH rules). However, the purpose of these stop loss requirements, as generally applied to active employees in the large and small group commercial health insurance markets, is not present when stop loss is being purchased by an employer for its retirees who are entitled to Medicare. Pursuant to Federal law, for Medicare eligible retirees, Medicare is primary to an employer-provided group health benefits plan. Thus, the need to set modest attachment points to avoid the stop loss insurance from becoming a health benefits plan free from state regulation is not a significant concern with respect to coverage for retirees, and their eligible dependents, who are entitled to Medicare.

Therefore, the Department is issuing this guidance to clarify the applicability of the large employer stop loss attachment point requirements in N.J.A.C. 11:4-40.2 to retirees entitled to Medicare who are insured under their employer-provided retiree health benefits plan. Insurers are advised that all stop loss insurance policy forms are still required to be filed with the Department, even with regard to large group retiree medical plans. However, stop-loss policies issued that exclusively cover retirees, and their eligible dependents who are entitled to Medicare and who are insured under an employer-provided retiree medical plan are not subject to the above attachment point requirements. These policies do not implicate the protections in other State laws for retirees and/or dependents who are not yet eligible for Medicare and for employees covered under active employee health benefit plans. The Department will continue to review any submission of stop loss insurance policy forms. Such a submission should include group underwriting rules that clearly state the eligibility requirements and documentation required to demonstrate eligibility. Those requirements address considerations such as the nature of the entity providing the self-funded plan and the ability of the entity to fund amounts up to the attachment point. If the self-funded plan exclusively covers Medicare-entitled retirees, such information should be included.

If you have any questions, please contact the Department's Life and Health Unit at: lifehealth@dobi.nj.gov.

August 13, 2020

Date



Marlene Caride
Commissioner