



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

BULLETIN NUMBERS PG-7 & HC 42
February 15, 1990

TO: COMPANIES LICENSED IN THE STATE OF CONNECTICUT TO WRITE PROPERTY OR CASUALTY INSURANCE OR ACCIDENT AND HEALTH INSURANCE

RE: CATASTROPHIC STOP LOSS COVERAGE AKA Excess Reimbursement Policies or Excess Coverage Policies

There has been a considerable amount of litigation in recent years with respect to the degree of regulatory control over self-insured employee benefit plans operating under the Employee Retirement Income Security Act of 1974 (ERISA). One area in question involved Stop Loss insurance.

The results of such litigation have generally held that if Stop Loss insurance meets certain requirements which would characterize it as catastrophic coverage it is not group health insurance and the employee benefit plan remains an "uninsured" plan for purposes of the ERISA preemption of state Insurance laws. It is the Connecticut Insurance Department's position that ERISA does not preempt all regulation of catastrophic stop loss coverage, e.g., the requirement to file the stop loss policy with the Department.

In determining true catastrophic stop loss coverage the courts have identified certain necessary characteristics:

1. The Stop Loss policy insures the issuer of the plan, usually the employer for the benefit of the plan.
2. Payment is made to the plan rather than to the individual employee for incurred claims.
3. The specific aggregate amount required to trigger the stop-loss coverage will not or is not likely to be reached. Stated another way the claim liability limits should not be set so low that payment by the stop loss insurer is an actuarial certainty.

It is opinion of the Connecticut Insurance Department that this type of coverage has characteristics of a liability policy as well as an accident and health policy. Accordingly, either a property and casualty insurer or an accident and health insurer may issue such coverage. The form of the policy is required to be filed with the Connecticut Insurance Department pursuant to section 38-165 C.G.S. if written by an accident and health insurer or Section 38-201n C.G.S. if written by a property and casualty insurer for a determination that the form of coverage is actually a catastrophic stop loss policy and not an accident and health policy with a high deductible. A catastrophic stop loss policy provides coverage to the employer for "catastrophic" benefits paid by the employer to employees.

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If a policy meets all of the judicially identified requirements described above and is not called reinsurance then it is classified as a catastrophic stop loss policy and doesn't have to comply with Connecticut mandated health benefits laws. If a policy fails any one of these requirements, the policy shall be considered subject to all Connecticut statutes and may be rejected on grounds of noncompliance.

The following procedures must be followed:

- A. It may be written by either a:
- (1) life insurance company with a line of business authority for accident & health (Connecticut Insurance Department Code 8), or
 - (2) property and casualty insurance company with line of business authority for liability other than auto (B.I. and P.D.) (Connecticut Insurance Department Code 10).*
- B. Experience shall be reported:
- (1) if written by a life insurance company, on page 46 of the Accident and Health section of the life statement or
 - (2) if written by a property and casualty insurance company, on Line 17, "Other liability" on page 14 of the fire and casualty annual statement.*
- C. Standards for such programs:
- (1) Retention (often referred to as the attachment point) must be at least \$15,000 per individual or family. This should not be confused with an "aggregate attachment point."
 - (2) If a third party administrator is involved it must be licensed. This is being contested in several jurisdictions as to whether ERISA preempts licensing requirements of a state insurance regulatory agency.
- D. All filings, whether made by a life insurance company or property and casualty insurance company, should be made with the Property and Casualty Division of the department.

* When this type of coverage is written in a property and casualty company it is a form of contractual liability policy.

Very truly yours,



Peter F. Kelly
INSURANCE COMMISSIONER