Protecting the Exchange and SHOP, in Particular, Against Adverse Selection

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Sources of Adverse Selection
(where Federal Intervention would be Helpful)

- Self-insured employers and ERISA (including stop-loss insurance regulation)

- Association health plans/PEOs/MEWAs

- Federally-required multi-state plans (potentially)

- Sole proprietors/groups of one

Adverse Selection

- Employers with healthy workers providing health coverage outside the small group regulated market (self-insuring or through AHPs, PEOs, MEWAs) (not spreading cost market-wide)

- When less healthy/higher medical claims, reentering the small group market and spreading cost market-wide (under adjusted community rating)

Prices higher when healthy don't participate

Market Developments and Environment

- Carriers getting ready for 2014 and new business models/approaches/focus
  - Assurant (core strengths not medical management): stop-loss
  - CIGNA: stop-loss
  - Aetna: small group market withdrawal (some states <u>not</u> all)
- ACA:
  - Adjusted community rating
  - Small group market to 100
  - Fees on health insurers: $8B in 2014 to $14.3B in 2018 (increases with premium growth)
- Non-ACA:
  - Premium taxes
  - Guaranty fund
  - Rate/form reviews, etc.

From Assurant's webpage
(not a complete list):

- Assurant® Self-Funded Health Plans could be for you if you **have 10 to 50** employees and are:

- Tired of paying high premiums for benefits you seldom use

- Ready to take control over health care costs now and for years to come

- Self funding is an approach many large corporations use to control health care costs. With Assurant Self-Funded Health Plans, self funding comes within reach for your small business. We've done all the work of setting up a complete self-funding program, making it easy to establish and fund your own health benefit plan.

From Assurant's webpage:
Is This Plan Right For My Group?

- Our professional risk managers work with you to help you determine if Assurant Self-Funded Health Plans are right for your group. They carefully evaluate groups and issue coverage to those who are likely to benefit from a self-funded plan.

- Self funding offers great advantages for many, especially those groups whose members have relatively few ongoing, high-cost medical needs.

- **But self funding is not the best choice for all. If your group includes members with serious, ongoing health conditions, you're less likely to benefit from self funding.**(emphasis added)

https://www.groupselffunded.com/groupdetails.aspx

From Assurant's webpage:

- **Where are Assurant Health Self-Funded plans available?**

- Assurant Health Self-Funded plans are available to businesses whose primary location is in **Colorado**, **Georgia**, **Maryland**, **Massachusetts**, **Missouri**, and **Washington**. We're expanding our coverage area so please contact us directly at selffunded@assurant.com to see if we are available in your area

ERISA and Adverse Selection

- Employee Retirement Income Security Act of 1974 (ERISA as amended)
  - Private employers
  - Broad preemption of state laws (except insurance)
- ERISA Implications:
  - A state cannot prohibit employers from self-insuring
  - State regulation of stop-loss insurance has been challenged (AMS v. Barlett, 4th circuit, 111 F. 3d 358 1997)

Stop-Loss Insurance

Other issues with stop-loss:

- off-shore and payment of claims

- "buyer be ware" – not always an informed decision

- few if any standards/protections, e.g., preex rules n/a to stop-loss so employer is on hook for 100% cost of claims

Options:

- NAIC model update (raise attachment points, *prohibit stop-loss carrier from directly/indirectly providing TPA/upfront funding services*)
  - State enact/adopt new model?
  - ERISA litigation potential
- Federal help:
  - Include NAIC updated model in federal regulations
  - Directly/indirectly prohibit self-insuring for smaller groups

Adverse Selection through AHPs, PEOs, MEWAs and Other ERISA-related Arrangements

- Association Health Plans:
  - Small group or large group (rating pool)
  - Rate review regulation helpful for oversight of rates
  - Issue yet to be addressed: Group Health Plan status and exemption from small group market for some associations
- Professional Employee/Employer Organizations (PEOs)
- Multiple Employer Welfare Arrangements (MEWAs – self-insured and fully-insured)

Multi-state plans (OPM)

Section 1324 "level playing field": …health insurance issuer shall not be subject to any Federal or State law …in(b) if …(COOP) under section 1322, or a multi-State qualified health plan under section 1334, is not subject to such law.

(b)…relating to: (1) guaranteed renewal; (2) rating; (3) preex.., (4) non-discrimination; (5) quality improvement and reporting; (6) fraud and abuse; (7) solvency and financial requirements; (8) market conduct; (9) prompt payment; (10) appeals and grievances; (11) privacy and confidentiality; (12) licensure; and (13) benefit plan material and information

Multi-state plans (cont.)

- Regulations not yet issued

- If state enforcement and oversight, then able to address adverse selection issues

- Note: can require state benefit mandates beyond EHB (section 1334)

Sole Proprietors/Groups of One

- Federal law: a group health plan (ERISA) only exists if there are two (minimum) people covered; two people may not be spouses (based on 1996 HIPAA definition relying on ERISA terminology and definitions)

- State law: if allow "group of one" currently and without federal guidance preempting state law, adverse selection issues if sole proprietor has choice which market to be in (assume not eligible for subsidies through exchange)

Sources of Adverse Selection

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State Health Reform Assistance Network
Charting the Road to Coverage