

Life After SB-161: Is Self Funding Still Viable In California?

Last year Governor Brown signed SB-161 into law. SB-161 was called the “Stop Loss Bill” because it regulates the sale of stop loss insurance for small employers with less than 51 employees.

Supported by the Department of Insurance, consumer groups and some key carriers, this bill prohibited a stop loss insurer from selling specific stop loss with less than a \$35,000 deductible or aggregate stop loss with less than a \$5,000/person

attachment point to small employers (2-50 eligible employees).

One of the groups who opposed SB-161 was the Coalition for Business Healthcare Choices, who claimed that SB-161 limited viable options for small employers who are struggling to find a way

to provide affordable health benefits for their employees. Proponents of SB-161 claimed that the legislation was needed to “protect consumers” and make sure that self funded arrangements did not try to skirt the provisions of the Affordable Care Act. So here we are almost a full year into SB-161 and what has happened? First, even though small employers are permitted under Federal Law (ERISA) to set up and manage their own self funded benefit plan, they will not do that in California without having to assume a huge amount of liability due to the very high minimum limits imposed on them by SB-161. So the bill had the desired effect in that few, if any, small employers have moved into self funded programs in 2014. Thus, small employers have two options: To purchase traditional fully insured coverage or simply drop their group coverage and let employees purchase individual plans now that these are guaranteed issue as a result of the ACA. Second, the mid-sized market (51-99) has seen explosive growth in self-funding in 2014 as their premium rates increased to uncomfortable levels. At least five new carriers selling Level Funding (a self funding option) have now entered the California market since 1/1/2014. They believe that up until 2016 (when the definition of a



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small employer is set to change from 2-50 to 2-99) there will be a serious migration from traditional fully insured plans to alternative funding arrangements including level funding. Because self-funded plans (including level funding) avoid all State and most federal premium taxes, employers recognize that there are not only savings from dollar one, but also want the opportunity to assume some of the risk in exchange for retaining surplus generated when they have lower claims than anticipated. This concept of retain-

ing year-end surplus really makes self funding attractive and having the right type/level of stop loss insurance is a key ingredient of good risk management for employers of any size. Some level funding carriers will go alongside of certain HMO plans and can actually enhance the employer's offering of PPO or POS options available to employees. Interestingly, Oregon, last year, repealed legislation that also prohibited the selling of stop loss insurance to small employers. Their legislature and governor realized that this prohibition was actually hurting small employers in Oregon. The results of this repeal have seen a dramatic turnaround in self-funding activity in Oregon. The Coalition for Business Healthcare Choices continues to make progress in educating legislators and regulators about the positive reasons to allow businesses the option of self funding their health benefits. Our representatives in Sacramento continue to meet with business groups and interested parties to formulate a way to amend SB-161 into something that will give small businesses back the options they need to provide affordable health benefits for their employees. Given the fact that the stop loss prohibition will apply to employers with 51-99 employees beginning January 1, 2016, there is a lot of work to be done to find a legisla-

tion resolution to this matter in 2015. If you, your clients or others with whom you do business are concerned about this matter, please join the

The Coalition for Business Healthcare Choices continues to make progress in educating legislators and regulators about the positive reasons to allow businesses the option of self funding their health benefits.

Coalition for Business Healthcare Choices to help employers gain back choice in the way they provide employee benefits for their employees. □

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