

Adverse Selection Meeting Summary February 22, 2012

Exchange staff began the meeting by calling attention to the Workgroup's two discussion topics: potential reinsurance entities and stop loss provisions.

1) Potential Reinsurance Entities

Exchange staff provided some context for the Workgroup's conversation and reminded members that under proposed rules, states operating their own exchanges are also required to operate their own reinsurance programs. Reinsurance is a transitional three-year program designed to protect carriers against unexpectedly high medical costs for enrollees in the individual market.

The Minnesota Comprehensive Health Association (MCHA) could potentially take on the role of reinsurance administrator with some changes to its governance structure. Kirby Erickson, MCHA Director, described MCHA's thinking to date about the extent to which MCHA may be interested in being Minnesota's reinsurance administrator. MCHA is early on in its thinking about serving as Minnesota's reinsurer and its board not taken on a position on whether it wishes to express interest in serving as reinsurer. Responses to the HHS Request for Information will likely produce a set of known potential reinsurance entities.

MCHA is not a reinsurer today and has two main issues if it wants to serve as the reinsurer: 1) MCHA would have to revise its board structure as it currently has carriers as the majority of its members, which would pose a conflict of interest; and 2) MCHA does not have the infrastructure to process and pay reinsurance claims and would want to partner with an external entity that is in that business.

Workgroup members discussed potential designs of Minnesota's reinsurance program and indicated they wanted more background information on the purpose and operation of it. It was clarified that, under the ACA, a reinsurance entity is in the business of processing and paying reinsurance claims with a fixed amount of funding; therefore, this reinsurance entity would provide a set of administrative services rather than take on risk from issuers. Assessments will be placed on fully- and self-insured markets at a national level. At a high level, HHS has reassured states that assessments from carriers in their state will generally flow back to the state, but the specific process by which funds will flow has not been finalized and will be clearer in HHS' final rules.

Some workgroup members expressed interest in states' options for building on federal parameters, such as the total amount of funding available for reinsurance as well as attachment points at which reinsurance coverage would begin.

Other workgroup members questioned whether a for-profit organization can form a non-profit organization to serve as a reinsurer or whether this would be viewed as untenable

given potential conflicts of interest. In addition, workgroup members asked whether it would be necessary to conduct a procurement process to hire a reinsurance entity.

Workgroup members were invited to provide additional feedback on what entities could serve as a reinsurer.

2) Small Employers and Stop-Loss Provisions

Commerce staff reviewed provisions of Minnesota Statutes 60A.235 and 60A.236, which govern stop loss policies for small employers. These statutes are collectively designed to limit the extent to which small employers self insure by requiring small employers to have a significant financial obligation to pay for the costs of medical services before stop loss coverage begins and to ensure stop loss products have other key characteristics.

Minnesota Statutes 60A.235 has provisions based on a model from the National Association of Insurance Commissioners. It requires stop loss policies for small employers to have the following:

- A specific attachment point for claims incurred per individual that is lower than \$20,000;
- an aggregate attachment point, for groups of 50 or fewer, that is lower than the greater of: 1) \$4,000 times the number of group members; 2) 120 percent of expected claims; or 3) \$20,000; or
- an aggregate attachment point for groups of 51 or more that is lower than 110 percent of expected claims.

The Commissioner of Commerce may adjust these dollar amounts based upon changes in the medical component of the Consumer Price Index (CPI).

Minnesota Statutes 60A.236 requires stop loss policies for small employers to include coverage of all claims incurred during the contract period regardless of when the claims are paid. This is a unique requirement in Minnesota and is not based on an NAIC model.

Workgroup members discussed the adequacy of the statutes in terms of whether they will be sufficient to mitigate the extent of self-insurance among small employers. This discussion was had in the context of whether Minnesota should increase the size of its small group market to include employers with 51-100 employees before all states are required to do so in 2016.

Workgroup members had varying viewpoints and suggestions:

- It will be difficult to limit self-insurance among employers with 51-100 employees given the tax advantages they gain in self-insuring and the presence of Professional Employment Organizations (PEOs), through which companies contract out their employer human resources and benefits functions. While Minnesota has been able to limit PEO activity in Minnesota through regulation aimed at ensuring companies have a true employer relationship with their employees, the state does not have control over the PEO industry in other states.

- Given that self-insured companies do not pay the MCHA assessment, will MCHA assessment affect incentives to self-insure? The MCHA assessment is only a small component of the incentive to self-insure and it will decline over time as MCHA phases out.
- Does Minnesota need to significantly increase the dollar value thresholds in 60A.235? One of the amounts – the \$20,000 amount – was increased from \$10,000 to \$20,000 when the statute was revised in 2009. This issue isn't only about adverse selection inside and outside of the Exchange, but inside and outside of the regulated insurance market.
 - The Commissioner can raise the amounts based on the medical component of the CPI. Is that sufficient or should we rebase the amount? The dollar values in the statute were not set in the context of all the changes that will occur in insurance markets due to the ACA.
- Incurred claims – do we phrase both statutes to include employers with 51-100 employees? When is the right time to do so?
- Some changes may need to occur at the federal level – limits on PEOs and treating stop loss policies generally more like small group insurance.

Update on Plan Certification and Risk Adjustment Subgroups:

Many people have volunteered for these workgroups and the Exchange needs to add other members to have stakeholder groups represented. The Plan Certification Subgroup will be launched prior to the Risk Adjustment Workgroup. The Exchange will conduct a procurement process to hire a vendor to support the risk adjustment method development process and will convene the Risk Adjustment Subgroup when that procurement process is well underway.

Next steps:

The Adverse Selection Workgroup will next discuss potential rules for individual and employer participation in the Exchange. Workgroup members are invited to provide input on potential related issues/rules for consideration so that Exchange staff can provide Workgroup members related background material in advance of the next meeting.