

Chapter 494

(House Bill 552)

AN ACT concerning

Health Insurance – Medical Stop–Loss Insurance – Small Employers

FOR the purpose of altering, with ~~a certain exception~~ certain exceptions, certain attachment points above which a medical stop–loss insurer assumes certain liability for losses incurred by an insured; applying the altered attachment points to renewal of a policy or contract of medical stop–loss insurance; prohibiting a medical stop–loss insurer, for a certain policy or contract, from taking certain actions; requiring a medical stop–loss insurer, for a certain policy or contract, to guarantee certain rates, pay certain claims within a certain period, and disclose certain information to a small employer; ~~requiring a medical stop–loss insurer, on or before a certain date each year, to file a certain actuarial certification with the Maryland Insurance Commissioner;~~ requiring the Maryland Insurance Administration to conduct a study of the use of medical stop–loss insurance in self–funded employer health plans; requiring the Administration to solicit information from stakeholders, including certain persons, and hold certain hearings; requiring the study to include certain matters; requiring the Administration to submit certain reports to the Governor and certain legislative committees on or before certain dates; providing for the application of this Act; providing for the termination of this Act; defining a certain term; making ~~a certain conforming change~~ certain conforming changes; and generally relating to medical stop–loss insurance.

BY repealing and reenacting, with amendments,
 Article – Insurance
 Section 15–129
 Annotated Code of Maryland
 (2011 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Insurance

15–129.

(a) (1) In this section the following words have the meanings indicated.

(2) “Aggregate attachment point” means the percentage of expected claims in a policy year above which the medical stop–loss insurer assumes all or part of the liability for losses incurred by the insured.

(3) “Carrier” means:

- (i) an insurer; or
- (ii) a nonprofit health service plan.

(4) “Expected claims” means the amount of claims that, in the absence of medical stop-loss insurance, are projected to be incurred by the insured using reasonable and accepted actuarial principles.

(5) “Medical stop-loss insurance” means insurance, other than reinsurance, that is purchased by a person, other than a carrier or a health care provider, to protect the person against catastrophic, excess, or unexpected losses incurred by that person’s obligations to third parties under the terms of a health benefit plan.

(6) “Medical stop-loss insurer” means a carrier that is authorized to sell, issue, and deliver policies of medical stop-loss insurance in the State.

(7) “SMALL EMPLOYER” HAS THE MEANING STATED IN § 31-101 OF THIS ARTICLE.

[(7)] (8) “Specific attachment point” means the dollar amount in losses attributable to a single individual in a policy year beyond which the medical stop-loss insurer assumes all or part of the liability for losses incurred by the insured.

(b) **[This] SUBJECT TO SUBSECTION (D)(2) OF THIS SECTION, THIS** section applies to each medical stop-loss insurer and each medical stop-loss insurance policy or contract that is delivered or issued for delivery in the State.

(c) Medical stop-loss insurance may only be sold, issued, or delivered in the State by a carrier that holds a certificate of authority issued by the Commissioner that authorizes the carrier to engage in the business of health insurance or to act as a nonprofit health service plan.

(d) **(1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** medical stop-loss insurer may not issue, **RENEW**, deliver, or offer a policy or contract of medical stop-loss insurance, if the policy **OR CONTRACT** has:

[(1)] (I) a specific attachment point of less than **[\$10,000] ~~\$40,000~~ \$22,500**; or

[(2)] (II) an aggregate attachment point of less than **[115%] ~~125%~~ 120%** of expected claims.

(2) THIS SUBSECTION DOES NOT APPLY TO:

(I) A POLICY OR CONTRACT OF MEDICAL STOP-LOSS INSURANCE ISSUED OR DELIVERED BEFORE ~~JANUARY~~ JUNE 1, 2015, IF THE POLICY OR CONTRACT MAINTAINS:

1. A SPECIFIC ATTACHMENT POINT OF NO LESS THAN \$10,000; AND

2. AN AGGREGATE ATTACHMENT POINT OF NO LESS THAN 115% OF EXPECTED CLAIMS; ~~OR~~

(II) A RENEWAL OF A POLICY OR CONTRACT DESCRIBED IN ITEM (I) OF THIS PARAGRAPH; OR

(III) A POLICY OR CONTRACT OF MEDICAL STOP-LOSS INSURANCE ISSUED OR DELIVERED ON OR AFTER JUNE 1, 2015, IF THE POLICY OR CONTRACT:

1. IS ISSUED OR DELIVERED TO AN EMPLOYER THAT ON MAY 31, 2015, HELD A POLICY OR CONTRACT OF MEDICAL STOP-LOSS INSURANCE WITH:

A. A SPECIFIC ATTACHMENT POINT OF NOT LESS THAN \$10,000; AND

B. AN AGGREGATE ATTACHMENT POINT OF NOT LESS THAN 115% OF EXPECTED CLAIMS; AND

2. MAINTAINS:

A. A SPECIFIC ATTACHMENT POINT OF NOT LESS THAN \$10,000; AND

B. AN AGGREGATE ATTACHMENT POINT OF NOT LESS THAN 115% OF EXPECTED CLAIMS.

(E) FOR A STOP-LOSS INSURANCE POLICY OR CONTRACT ISSUED TO A SMALL EMPLOYER, A MEDICAL STOP-LOSS INSURER MAY NOT:

~~(1) INCREASE COST SHARING OR DECREASE OR REMOVE STOP-LOSS COVERAGE FOR A SPECIFIC INDIVIDUAL WITHIN A SMALL EMPLOYER'S HEALTH BENEFIT PLAN; OR~~

(1) (1) IMPOSE HIGHER COST SHARING FOR A SPECIFIC INDIVIDUAL WITHIN A SMALL EMPLOYER'S HEALTH BENEFIT PLAN THAN IS

REQUIRED FOR OTHER INDIVIDUALS WITHIN THE SMALL EMPLOYER'S HEALTH BENEFIT PLAN; OR

(II) DECREASE OR REMOVE STOP-LOSS COVERAGE FOR A SPECIFIC INDIVIDUAL WITHIN A SMALL EMPLOYER'S HEALTH BENEFIT PLAN; OR

(2) EXCLUDE ANY EMPLOYEE OR DEPENDENT FROM A POLICY OR CONTRACT ON THE BASIS OF AN ACTUAL OR EXPECTED HEALTH STATUS-RELATED FACTOR OR CONDITION, INCLUDING:

(I) PHYSICAL OR ~~MENTAL ILLNESS~~ BEHAVIORAL HEALTH, INCLUDING MENTAL ILLNESS OR SUBSTANCE USE DISORDER;

(II) CLAIMS EXPERIENCE;

(III) MEDICAL HISTORY;

(IV) RECEIPT OF HEALTH CARE;

(V) GENETIC INFORMATION;

(VI) DISABILITY;

(VII) EVIDENCE OF INSURABILITY, INCLUDING CONDITIONS ARISING OUT OF ACTS OF DOMESTIC VIOLENCE AGAINST AN EMPLOYEE OR DEPENDENT; OR

(VIII) ANY OTHER HEALTH STATUS-RELATED FACTOR AS DETERMINED BY THE COMMISSIONER.

(F) FOR A STOP-LOSS INSURANCE POLICY OR CONTRACT ISSUED TO A SMALL EMPLOYER, A MEDICAL STOP-LOSS INSURER SHALL:

(1) GUARANTEE RATES FOR AT LEAST 12 MONTHS, WITHOUT ADJUSTMENT, UNLESS THERE IS A CHANGE IN:

(I) THE BENEFITS PROVIDED UNDER THE SMALL EMPLOYER'S HEALTH BENEFIT PLAN DURING THE POLICY OR CONTRACT PERIOD;

(II) THE OWNERSHIP AND CONTROL OF THE SMALL EMPLOYER;

OR

(III) THE NUMBER OF COVERED LIVES BY A SIGNIFICANT PERCENTAGE RESULTING FROM AN EVENT SUCH AS AN ACQUISITION OR A DIVESTITURE;

(2) PAY STOP-LOSS CLAIMS INCURRED DURING THE POLICY OR CONTRACT PERIOD AND SUBMITTED WITHIN 12 MONTHS AFTER THE EXPIRATION DATE OF THE POLICY OR CONTRACT; AND

(3) DISCLOSE TO THE SMALL EMPLOYER, IN A FORM AND MANNER APPROVED BY THE COMMISSIONER AND BEFORE ENTERING INTO A POLICY OR CONTRACT FOR MEDICAL STOP-LOSS INSURANCE:

(I) THE TOTAL COSTS OF THE POLICY OR CONTRACT;

(II) 1. THE DATES ON WHICH THE POLICY OR CONTRACT TAKES EFFECT AND TERMINATES; AND

2. PROVISIONS FOR RENEWING THE POLICY OR CONTRACT;

(III) THE AGGREGATE ATTACHMENT POINT AND THE SPECIFIC ATTACHMENT POINT FOR THE POLICY OR CONTRACT; AND

(IV) ANY LIMITATIONS ON COVERAGE.

[(e)] (G) A medical stop-loss insurer who offers or issues a medical stop-loss insurance policy OR CONTRACT that does not meet the requirements of this section shall be subject to the sanctions set forth in § 4-113 of this article for authorized insurers and § 4-212 of this article for unauthorized insurers.

~~**(H) ON OR BEFORE APRIL 1 OF EACH YEAR, A MEDICAL STOP-LOSS INSURER SHALL FILE WITH THE COMMISSIONER, IN A FORM AND MANNER APPROVED BY THE COMMISSIONER, AN ACTUARIAL CERTIFICATION THAT THE INSURER IS IN COMPLIANCE WITH THE MINIMUM ATTACHMENT POINTS SPECIFIED IN THIS SECTION.**~~

~~**[(f)] (I) Nothing in this section shall be construed as:**~~

~~**(1) imposing any requirement or duty on any person other than a carrier;**~~

or

~~**(2) treating any medical stop-loss insurance policy as a policy of individual, group, or blanket health insurance covering the participants in the underlying health benefit plan.**~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Administration shall conduct a study of the use of medical stop-loss insurance in self-funded employer health plans.

(b) As part of the study, the Administration shall:

(1) solicit information from stakeholders; and

(2) hold informational hearings, as appropriate.

(c) The stakeholders from whom the Administration shall solicit information shall include:

(1) carriers offering fully insured health plans in the State;

(2) carriers offering medical stop-loss insurance in the State;

(3) employers utilizing fully insured health plans;

(4) employers utilizing self-funded health plans in conjunction with medical stop-loss insurance;

(5) insurance producers;

(6) third party administrators;

(7) consumers;

(8) the Office of the Attorney General;

(9) Maryland counties and municipalities; and

(10) the Maryland Bankers Association.

(d) The study shall include:

(1) an analysis of baseline data, including sample data, where appropriate,
on:

(i) the types and costs of health benefit plans, including self-insured plans, offered in the State by employers with 2 to 50 employees and employers with 51 to 100 employees;

(ii) for self-insured plans, the individual and aggregate attachment points of medical stop-loss insurance purchased; and

(iii) the number of plan designs and carriers available in the small employer market, including market share by carrier, and the number of plan designs and carriers available in the market for health benefit plans utilizing medical stop-loss insurance, including market share by medical stop-loss carrier;

(2) an overview of the employer health plan market in contiguous states, including the percentage of fully insured employer health plans and self-insured employer health plans utilizing medical stop-loss insurance;

(3) an estimate of the number of employers with 51 to 100 employees whose health benefits plans would change from the large group to the small group market in 2016, as a result of the change in the size of the small group market required by the federal Affordable Care Act;

(4) an analysis of statutory and regulatory requirements for medical stop-loss insurance in other states and the experience of states the requirements of which are different from those in Maryland;

(5) a review of any guidance, recommendations, or model legislation regarding medical stop-loss insurance by the National Association of Insurance Commissioners or other groups;

(6) identification of any incentives and disincentives beginning in 2016, associated with the purchase of health insurance in the small group market compared to self-insurance with the purchase of medical stop-loss insurance, for both employers with 2 to 50 employees and employers with 51 to 100 employees;

(7) a comparison of the risk profile of small employers that self-insure and the risk profile of small employers that purchase health insurance in the small group market;

(8) an assessment of the impact on the stability and viability of the small group market, including the possibility of adverse selection and higher premiums, resulting from employers:

(i) choosing to self-insure instead of purchasing health insurance in the small group market; and

(ii) after self-insuring, switching to the small group market;

(9) an assessment of any impact on the Maryland Health Benefit Exchange of small employers choosing to drop coverage for their employees;

(10) an assessment of different attachment points for medical stop-loss insurance, the effect that medical inflation could have on the attachment points in statute, and the desirability of maintaining or adjusting the current statutory levels;

(11) an assessment of the consumer protections in medical stop-loss insurance policies and contracts and the desirability of maintaining or adjusting the current statutory consumer protections; and

(12) an assessment of the impact on local governments and small employers of any changes to the attachment points or consumer protections in medical stop-loss insurance policies and contracts.

(e) (1) On or before December 1, 2015, the Administration shall submit an interim report of its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Finance Committee and the House Health and Government Operations Committee.

(2) On or before October 1, 2016, the Administration shall submit a final report of its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Finance Committee and the House Health and Government Operations Committee.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all medical stop-loss insurance policies and contracts issued, delivered, or renewed in the State on or after June 1, 2015.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2015. It shall remain effective for a period of 3 years and 1 month and, at the end of June 30, 2018, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2015.