STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

Regulation H-2009-02 (Revised)

HEALTH CARE STOP LOSS INSURANCE

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Section 1. Authority and Purpose.

This Rule is promulgated under the authority granted to the Commissioner by Title 8 V.S.A. § 15 and Title 8 V.S.A. § 6015 in order to establish criteria for the issuance of health care stop loss insurance policies and contracts. Nothing in this Rule shall be construed as imposing any requirement or duty on any person other than an insurer or as treating any health care stop loss policy as a direct policy of health insurance.

Section 2. Scope.

This Rule applies to each health care stop loss insurance policy or contract that is delivered or issued for delivery by an insurer in Vermont.

Section 3. Definitions.

As used in this Rule:

A. "Actuarial Certification" means a written and signed statement by a member in good standing of the American Academy of Actuaries, or other individual acceptable to the Commissioner, that an insurer is in compliance with the provisions of this Rule, based upon the individual's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the insurer in establishing

attachment points and other applicable determinations in conjunction with the provision of health care stop loss insurance coverage.

B. "Attachment Point" means the claims amount incurred by a group health plan beyond which the health care stop loss insurer incurs a liability for payment.

C. "Commissioner" means the Commissioner of the Department of Financial Regulation.

D. "Department" means the Vermont Department of Financial Regulation.

E. "Employee" shall have the same meaning as 26 U.S.C. § 4980H(c)(4), excluding part-time employees or seasonal workers as defined in 26 U.S.C. § 4980H(c)(2)(B).

F. "Expected Claims" means the amount of claims that, in the absence of a health care stop loss policy or other insurance, are projected to be incurred by a group health plan.

G. "Health Care Stop Loss Insurance" means insurance or other risk-transfer arrangement that is purchased by a group health plan or by the sponsor or trustee of such plan (or by any guarantor or indemnitor thereof other than a licensed insurance company or reinsurer), to limit the exposure of such person against losses sustained by such plan.

H. "Insurer" means any insurance company, including a captive insurance company formed or licensed under Chapter 141 of Title 8, Vermont Statutes Annotated (other than a pure captive), health maintenance organization, nonprofit hospital service corporation and nonprofit medical service corporation, and to the extent permitted by federal law, a risk retention group chartered and licensed in any state.

I. "Small Employer" has the same meaning provided in 33 V.S.A. § 1811(a)(3)(B), as amended and as may be amended from time to time. For purposes of determining whether an employer is a Small Employer under this Rule, this section shall apply to employers with employees in plans that are grandfathered under 8 V.S.A. § 4080g.

Section 4. Health Care Stop Loss Insurance Coverage Standards.

A. Each health care stop loss insurance policy or contract issued or renewed by an insurer must:

a) Have an annual attachment point for claims incurred per individual which is at least:
   i) $33,200; or
   ii) $40,000 for Small Employers with 25 or fewer employees.

b) Have an annual aggregate attachment point, for Small Employers, with more than 25 employees that is at least the greater of:

   i) 120 percent of expected claims; or
   ii) $33,200.

c) Have an annual aggregate attachment point, for Small Employers with 25 or fewer employees, that is at least the greater of:

   i) 120 percent of expected claims; or
   ii) $40,000

d) Have an annual aggregate attachment point, for any groups other than Small Employers, that is at least 110 percent of expected claims;

e) Not provide direct coverage of health care expenses of an individual; and

f) For Small Employers, not exclude from coverage any individual or group of individuals who are covered by the underlying group health plan.

B. The Commissioner shall, every third year beginning with the year 2020, commission an actuarial study of appropriate attachment point levels. Upon receiving the actuarial study, the Commissioner may, consistent with the study, adjust the attachment points set forth in Paragraph A, above. The Commissioner may amend these dollar amounts in increments of $100; any adjustments made to the dollar amounts set forth in Paragraph A or Paragraph B, above, must be in increments of $100. The Commissioner shall publish any adjustment to the dollar amounts set forth in Paragraph A, above, at least six (6) months before the date such adjustment is to become effective.

C. If the policy or contract provides for higher attachment points for any individual or group of individuals within the employer group, such attachment points may not be changed during the policy period. For Small Employers, no attachment point for an enrollee shall exceed three times the attachment point chosen for the policy.

D. Notwithstanding any provision to the contrary, a stop loss insurer may renew an existing health care stop loss insurance policy using the annual

attachment point for claims incurred per individual specified in subsection A(a)(i) and the annual aggregate attachment point specified in subsection A(b). This provision shall not apply to health care stop loss insurance policies issued after the effective date of this Rule.

Section 5. Required Disclosure Provisions.

Each health care stop loss insurance policy or contract shall include on the first page of the policy or contract, or attached to the policy or contract, in either contrasting color or in boldfaced type at least equal to the size of the type used for policy or contract captions, the following prominent and clear disclosures:

A. A disclosure indicating whether claims under the policy or contract are paid on a “run-in”, “paid”, “run-out” or other basis. To the extent such terms are used, those terms must be defined in the policy or contract, but the definitions need not appear with the disclosure provisions required by this Section.

B. If a “terminal liability” option is available under the policy or contract, a disclosure shall be provided that shall so state. If a terminal liability option is available, the policy or contract shall include a clear description of such option, but the description need not appear with the disclosure provisions required by this Section.

C. If the policy or contract restricts covered claims to those that are both incurred and paid by the insured during the contract period, then a disclosure statement shall be provided that states:

    Only eligible expenses that are both incurred under the group health plan and paid by the group health plan within the stated contract period for health care stop loss insurance are reimbursable under this policy.

D. For Small Employers, the application shall include a prominent statement describing the specific financial risks of self-insuring, including the risk of claims volatility. If the policy or contract provides for higher attachment points for any individual or group of individuals within the employer group, then the application shall also include a prominent statement describing the specific financial risks associated with such higher attachment points. The statement(s) must be signed by a representative of the Small Employer before coverage becomes effective.

E. For groups other than Small Employers, if the policy or contract provides for higher attachment points as described in subsection D or excludes from the policy or contract any individual or group of individuals covered by the underlying group health plan, then the application shall include a prominent statement describing the specific financial risks associated with such higher attachment

points or exclusions. The statement must be signed by a representative of the group before coverage becomes effective.

Section 6. Form Filing Requirements.

A. Insurers shall file all forms for approval by the Commissioner prior to use of a stop loss insurance policy form. No form shall be approved if it contains any provision:

a) which is unjust, unfair, inequitable, misleading, or contrary to the law of this state;
b) which excludes coverage or benefits from the underlying self-insured plan; or
c) which relates to medical necessity determinations, utilization management requirements, and usual and customary charge determinations.

B. Forms, as used in this Rule, shall include the following: all product forms, including but not limited to, policy forms, member handbooks, certificates, endorsements, riders, and applications.

Section 7. Rate Filing Requirements.

A. Prior to implementation, carriers shall file for approval rate filings that include, at a minimum, the following:

a) a certification by a member of the American Academy of Actuaries which certifies a carrier's compliance with this Rule. Such certification shall include sufficient detail for the Commissioner to verify that such certification is appropriate. Carriers shall provide additional information as requested by the Commissioner in order to verify representations in the rate filing;

b) a statement by a member of the American Academy of Actuaries that the rates are reasonable in relation to the benefits provided, and that they are neither excessive, deficient, nor unfairly discriminatory;

c) a description of the methodology for calculating the requested rate;

d) an identification of the effective date that the rates were designed for and the effective period of the rates; and

e) an explanation of adverse selection factors considered by the carrier.

B. No rate shall be approved if it is unjust, unfair, inequitable, misleading or contrary to the law of this state. Notice of a premium rate increase shall be provided to insureds at least 45 days prior to implementation, subject to waiver as approved by the Commissioner. In no event shall rate increases be implemented without at least 30 days written notice to the insured.

Section 8. Severability.

If any provision of this Rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Rule and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 9. Effectiveness.

This Rule shall govern health care stop loss insurance policies with coverage issued or renewed on or after March 1, 2022; provided, the Commissioner may waive or modify one or more of the provisions of this Rule for any health care stop loss insurance issued by a captive insurance company or risk retention group under a plan of operation satisfying the underlying purposes of this Rule as determined by the Commissioner. Administration and enforcement of this Rule with respect to Vermont-domiciled captive insurance companies and Vermont-domiciled risk retention groups shall be by the Department’s Captive Insurance Division consistent with the responsibilities of the Division and the Commissioner under Chapter 141 and Chapter 142 and Title 8.