



Bill Would Allow RRGs to Cover Property

Rep. Dennis Ross, R-Florida, and Rep. Ed Perlmutter, D-Colorado, have introduced a bill to expand what certain risk retention groups can insure.

H.R. 3794 seeks to allow them to write property coverage for nonprofits that have tax-exempt status and educational institutions or education-related institutions that are nonprofits or governmental entities. Eligible ones must have at least 10 years in operation and maintain at least \$10 million in capital and surplus. Additionally, the total insured value of risk for any policyholder could not exceed \$50 million.

The bill seeks to enhance the availability of stand-alone property coverage for small and midsize nonprofits. Opponents say the measure expands RRGs' coverage area while preserving their less rigorous system of regulatory oversight and could create a two-tier system.

Under the current law, coverage is limited to product liability, completed operations and all casualty except workers compensation.

ROCK CLIMBING > SCOTT SINDER AND KATE JENSEN

Hard Rock: Twist and Shout

Every time we make progress on the Affordable Care Act, the government tosses in a new twist.

I love December—the holidays, the good cheer, the self-congratulatory reflection. It's January that's difficult—starting over as if we are each a proverbial Sisyphus, set to begin the arduous journey of rolling the same old rock up the hill once more.

The Affordable Care Act is our rock. And the federal government treats our industry like Sisyphus. No matter how many times we roll that rock up the hill, our government continues to put up hurdles that prevent us from reaching the summit.

To start with, Congress bestowed two aggressively sought

ACA adjustments. First, the budget agreement unexpectedly repealed the not-yet-implemented automatic group health plan enrollment requirements for new hires at companies with more than 200 employees. Then, in October, in the middle of The Council's Insurance Leadership Forum in Colorado Springs, Congress passed the PACE Act. This eliminated the ACA's 2016 expansion of the definition of "small employer" to groups of 100 (along with related "community rating" and market reform requirements that apply to small groups). Now, under federal law, "small employers"

remain employers with 50 or fewer full-time employees. But! Let's roll the rock a little farther. States are permitted to expand that definition to groups of up to 100 if they choose to do so. And California, Colorado, the District of Columbia, New York, North Carolina, Vermont and Virginia apparently will do just that.

Finally, the Equal Employment Opportunity Commission issued proposed wellness regulations that would mostly negate its previously expressed view that any wellness-related health screen or medical test is a per se violation of the Americans with Disabilities Act or the Genetic Information Nondiscrimination Act. Nevertheless, in 2016 we will continue working to close the gap between the EEOC and the ACA wellness rules. Employers must be able to operate their plans within a coherent regulatory framework. (Is that rock feeling a bit heavier?)

Two other issues will dominate the ACA agenda in 2016: pursuit of >>

REGULATORY NEWS TICKER

MASSACHUSETTS Opioid overdose deaths up 20% from 2013 to 2014. First-half 2015 figures indicate further increase. State Health and Human Services secretary says it's a public health epidemic. Gov. Charlie Baker's proposals include letting doctors commit a person involuntarily for up to 72 hours at a drug treatment center if they are considered an immediate danger to themselves or others. He also suggests restricting patients to an initial three-day supply of painkillers when they are first prescribed an opioid. www.mass.gov

MINNESOTA Two health exchange insurers—BC/BS and Health Partners—yanked about 5,000 policies of MNsure for 2015, pulling those customers off the exchange market and denying MNsure the fees on premiums it collects. 6,500 more policies could be pulled for 2016. Subsidies are available only through the exchange. PreferredOne says it plans to exit the exchange. www.commerce.state.mn.us

MISSISSIPPI Mike Chaney reelected for third term as insurance commissioner. www.mid.state.ms.us/

NEW HAMPSHIRE Approves NCCI workers compensation loss cost decrease of 5.9% on average in the voluntary market and 10.9% decrease for assign risk rates as of Jan. 1. Residual market loss cost multiplier for 2016 is 1.505. www.nh.gov/insurance

NEW JERSEY Premiums for mid-level plan on federal health insurance exchange for state will rise 5% for 2016. www.state.nj.us/dobi/insmnu.shtml

NEW YORK Gov. Andrew Cuomo announced new measures in October to build out task force combatting worker exploitation. Includes creation of anti-retaliation unit and mediation unit within state Department of Labor. They'll deal with complaints of wage theft, working conditions and other violations. Task force has opened 30 cases across the state so far that center on violations of workers comp insurance, child labor, and wage/tips/overtime pay laws. >> AG Eric Schneiderman and federal Employee Benefits Security

ROCK CLIMBING

» the “Cadillac Tax” repeal and issuance of nondiscrimination rules, which could dramatically alter plan design going forward.

We think establishing a national standard benchmark plan as the ACA requires also should be on the agenda. It could blunt some of the negative Cadillac Tax ramifications while also addressing some of the regulators’ nondiscrimination rule objectives.

The Cadillac Tax was intended to “incentivize” employers to minimize costs associated with “excess” or overly generous benefits for corporate executives. The prospect of the 2018 rollout of the tax, however, may penalize employers who offer no-bells-and-whistles coverage at minimum value. Why? Because the ACA drafters failed to account for

what really drives healthcare costs: geography, industry, age, gender, claims, size of group and general level of healthfulness in a given group. A recent Towers Watson survey concluded, for example, that a whopping 82% of employers could cross the threshold by 2028.



In fact, there is a very real possibility, with ever-rising healthcare costs, that employers who merely satisfy the ACA’s minimum-value shared-responsibility requirements will someday be subject to the tax. It’s a Catch-22: it is untenable for employers to satisfy the requirements to avoid one ACA penalty only to trigger another.

Treasury officials have also informed us they intend to craft “nondiscrimination” rules that would be violated if lesser-paid employees do not participate at levels on par with more highly paid staff. The government appreciates the difficulty of imposing a retrospective participation test, and it intends to create a liability “safe harbor” for employers who only offer plans that satisfy the minimum value requirements as well as satisfy a yet-to-be determined affordability metric.

The problem here is many lower-paid employees are not buying minimum-value plans. They don’t even participate in the slimmed-down plans employers offer to satisfy the basic ACA mandates.

There is one potential avenue that could, at least partially, alleviate some of these dilemmas: the imposition of a single, standard, streamlined national

benchmark plan. Under the ACA, the Department of Health and Human Services is required to establish such a benchmark, which would become the standard basic plan in all state exchanges as well as the “small group” market. The ACA dictates that, if a state imposes mandates that go beyond the benchmark plan, the state would be required to pay the subsidy associated with any premium for those extra benefits. The expectation was that the benchmark plan would be basic and affordable and the subsidization requirement would lead to massive mandate reform.

But to date, HHS has punted. Instead, it has allowed each state to establish its own benchmark plan. Just to be crystal clear, HHS regulations specifically relieve states from any subsidy obligations associated with mandates that pre-date the ACA. So this is an opportunity lost, at least as of now.

We need to push this rock back up the hill in 2016. Maybe collectively we can push it over the top.

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HOT BUTTON

Workers comp opt-out programs are under fire. 10 senators and congressmen tell the Labor Department new state laws are shifting costs of workers compensation to public programs, such as Social Security Disability Insurance. They want a DOL report on the matter.

Employees Pay More Than a Third of Premiums

Average annual health plan cost per employee for all plans in 2015 is \$9,736, a 2.4% increase over 2014. Employees paid \$3,333 of that cost on average. Employers paid the rest.

(United Benefit Advisors)

REGULATORY NEWS TICKER

Administration agree to share information and jointly deal with health insurance law violations under employee benefit plans. Covers plans offer by insurers and self-insured plans; the latter cover about half of New York workers. State cannot enforce laws against self-insureds, and feds have no authority to regulate insurers, so joint effort boosts reach of both offices. » New York City surety bond rules challenged by Association of Car Wash Owners in lawsuit centering on requirements that owners of nonunionized carwashes post \$150,000

surety bond to get license while union shops pay only \$30,000. Union-supported campaign for the bond rule says bond acts to protect worker wages from theft. City says it will review law but agrees it protects low-wage workers. » Acting superintendent of Department of Financial Services Anthony Albanese plans to leave post by the end of 2015. Cuomo and Albanese have been fighting over DFS independence from governor’s office. Albanese will move back to private sector. www.dfs.ny.gov

OKLAHOMA Commissioner John Doak instructed p-c insurers in state to send policyholders a notice clarifying earthquake coverage. Notifications due to policyholders in early December. www.oid.ok.gov

SOUTH CAROLINA Issues emergency orders to owners of 63 dams, 45% of which are in Richland County, because of damage or failure during flooding from October rains. State says no immediate threat to public safety exists. www.doi.sc.gov

TENNESSEE Dissolves Tennessee Workers Compensation Insurance Plan (TWCIP), the state’s residual reinsurance program, as part of transition to NCCI as new residual workers comp administrator. Aon, which was administrator, will liquidate all assets of TWCIP reinsurance operations, called the Tennessee Aggregate Excess of Loss Reinsurance Mechanism. That will be replaced by NCCI’s Tennessee Reinsurance Mechanism. The TWCIP reinsurance mechanism has been converted to a quota share reinsurance program, similar to those