

Administrative Procedures – Final Proposed Rule Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).



BY:

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Health Care Stop Loss Insurance - Regulation H-2009-02

William R. Carrigan, on 9/28/16
 (signature) (date)

Printed Name and Title:
 William Carrigan
 Acting Commissioner

RECEIVED BY: _____

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Health Care Stop Loss Insurance - Regulation H-2009-02

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

16P-020

3. ADOPTING AGENCY:

Department of Financial Regulation

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Emily Kisicki

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, Vermont
05620

Telephone: 802 828 - 2904 Fax: -

E-Mail: emily.g.kisicki@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

dfr.vermont.gov/proposed-rules-and-regulations

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Emily Brown

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, Vermont
05620

Telephone: 802 828 - 4871 Fax: -

E-Mail: Emily.Brown@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

8 V.S.A. 15

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
13. **CONCISE SUMMARY (150 WORDS OR LESS):**

The proposed rule adopts the definition of "small employer" in 33 V.S.A. 1811 to replace the existing reference to the repealed definition under 8 V.S.A. 4080a. Adoption of this definition changes a "small employer" under this rule from employers with 50 or less employees to employers with 100 or less employees. The proposed rule also clarifies existing language and makes changes to reflect the repeal of 8 V.S.A. 4080a. The proposed rule establishes a stop loss insurance standard whereby the practice of "lasering" is prohibited in policies or contracts with small employers ("lasering" is the exclusion an individual or group of individuals from the stop loss policy, if they are covered by the underlying group health plan). The proposed rule also includes disclosure requirements for policies where a higher attachment point is applied for any individual or group of individuals. Additionally, the proposed rule updates the attachment point dollar amounts to reflect the adjustments made in Order 16-020-I.
14. **EXPLANATION OF WHY THE RULE IS NECESSARY:**

The proposed rule is necessary to align the regulation with current statutory definitions and policy. The existing rule uses statutory references

which have been repealed and no longer exist, so the rule must be updated for consistency. Additionally, the changes provide protections for small employers against insurers lasering certain individuals or employees from coverage.

15. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

The Department of Financial Regulation, insurers within Vermont, self-insured groups, employees or individuals of self-insured groups.

16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):

The proposed rule will have an overall positive economic impact. The changes will prevent the practice of lasering by insurers that provide stop loss insurance to small employers. The practice of lasering excludes certain individuals or employees from the Stop Loss Insurance coverage, leaving the small employer to cover the expenses for the excluded employee or individual who typically has higher overall health care expenses. The restriction on the practice of lasering for policies or contracts issued to small employers will have a positive impact for small employers in Vermont, including many self-insured businesses, because they will not be faced with costs for excluded individuals or employees. The lasering prohibition may have a negative economic impact on stop loss insurers that insure small employers, but the Department does not expect that this impact will lead to a significant increase in premiums for stop loss policies.

17. A HEARING WAS HELD.

18. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 7/8/2016

Time: 03:00 PM

Street Address: 89 Main Street, 3rd Floor Conference Room,
Montpelier, Vermont

Zip Code: 05620

Date:
Time: AM
Street Address:
Zip Code:

Date:
Time: AM
Street Address:
Zip Code:

Date:
Time: AM
Street Address:
Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

7/15/2016

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Stop loss
Health care
Insurance
Laser

Run Spell Check |

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Health Care Stop Loss Insurance - Regulation H-2009-02

2. ADOPTING AGENCY:

Department of Financial Regulation

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE**

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

SOS Log#: 09-011, Health Care Stop Loss Insurance -
Regulation H-2009-02; 10/29/2009



State of Vermont
Agency of Administration
109 State Street
Montpelier, VT 05609-0201
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(phone) 802-828-3322
(fax) 802-828-3320

Office of the Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

To: Louise Corliss, SOS
Chris Winters, SOS
Charlene Dindo, LCAR
ICAR Members

Date: May 10, 2016

Proposed Rule: Health Care Stop Loss Insurance - Regulation 11-2009-02
(Dept of Financial Regulation)

The following official action was taken at the May 9, 2016 meeting of ICAR.

Present: Chair Michael Clasen, Steve Knudson, Dirk Anderson, Scott Bascom, Diane Bothfeld,
Clare O'Shaughnessy and Allan Sullivan

Absent: Jenn Duggan
John Kessler

Abstain: Steve Knudson

The Committee has no objection to the proposed rule being filed with the Secretary of State.

The Committee approves the rule with the following recommendations.

1. Coversheet #10: Add information on the negative economic impact on insurers.
2. Coversheet #14: Add laser to key words.
3. Rule page 3, Section d): Drop "s" on "provides".

The Committee opposes filing of the proposed rule.

cc: Emily Brown
Ryan Chieffo
Emily Kisicki

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Health Care Stop Loss Insurance - Regulation H-2009-02

William R. Carrigan, on 9/28/16
(signature) (date)

Printed Name and Title:

William Carrigan, Acting Commissioner
Department of Financial Regulation

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Health Care Stop Loss Insurance - Regulation H-2009-02

2. ADOPTING AGENCY:

Department of Financial Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

- Department of Financial Regulation
- Insurers within the State of Vermont
- Self-insured Groups
- Employees or individuals of self-insured groups
- Small Employers with 100 employees or less. Will provide better Stop Loss Insurance Coverage.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

No Impact

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The proposed rule is based on a model rule of the National Association of Insurance Commissioners (NAIC). No other alternatives to the rule have been presented. No rule on the subject would keep outdated numbers and statutory references in the existing rule and allow insurers to laser individuals and employees, thereby passing on costs to the small employer purchasing a plan.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

The amendments do not directly regulate small businesses, and impose no reporting or compliance requirements on small businesses. There are no insurance companies in Vermont that qualify as small businesses under Vermont Statute, therefore 3 V.S.A. § 832a does not apply.

7. **GREENHOUSE GAS IMPACT: EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:**

a. **TRANSPORTATION —**

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE. "):

No Impact

b. **LAND USE AND DEVELOPMENT —**

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND. "):

No Impact

c. **BUILDING INFRASTRUCTURE —**

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION. "):

No Impact

d. **WASTE GENERATION / REDUCTION —**

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'. "):

No Impact

e. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

None

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Health Care Stop Loss Insurance - Regulation H-2009-02

2. ADOPTING AGENCY:

Department of Financial Regulation

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Department of Financial Regulation held a public hearing and posted the proposed rule on the Department's website.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The proposed rule is modeled on the National Association of Insurance Commissioners (NAIC) model for Health Care Stop Loss Insurance. Regulators, the insurance industry, and trade groups were involved in the creation of the model regulation. Additionally, the Department discussed the proposed rule with its domestic insurer and incorporated feedback received.



State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
www.dfr.vermont.gov

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964-1784
[Securities] 877-550-3907

To: Office of the Secretary of State
Legislative Committee on Administrative Rules

From: Emily Kisicki, Assistant General Counsel
Department of Financial Regulation

Re: Comments/Responses on Proposed Rule Titled "Health Care Stop Loss Insurance – Regulation H-2009-02"

Date: September 27, 2016

At the Public Hearing for the proposed rule, Health Care Stop Loss Insurance – Regulation H-2009-02, held in Montpelier on July 8, 2016, the Department of Financial Regulation (Department) received no comments. The deadline for public comments passed on July 15, 2016.

The Department received two written comments on the proposed rule:

- (1) Blue Cross Blue Shield of Vermont (BCBSVT) filed a written comment, a copy of which is attached.
- (2) Self-Insurance Institute of America, Inc. (SIIA) filed a written comment, a copy of which is attached.

The Department's response to the comments are as follows:

BCBSVT COMMENTS:

- 1) BCBSVT commented that the revised definition of "small employer" found in 33 V.S.A. § 1811 could be read to apply to employers with 51-100 employees in grandfathered plans, and suggested that the rule be explicit as to whether self-insured employers with 51-100 employees in grandfathered plans are small or large groups. The Department agreed that clarification on this point is necessary, and added language to reflect the Department's intent that all employers with 100 or fewer

Banking
802-828-3307

Insurance
802-828-3301

Captive Insurance
802-828-3304

Securities
802-828-3420

employees be considered “small employers,” regardless of whether those employers have employees in grandfathered health plans.

- 2) BCBSVT suggested that the proposed changes in Section 4.A.b.i be amended so that aggregate attachment points are calculated on a per contract basis rather than a per individual basis. The Department agreed with this suggestion and made changes to the proposed language, based on the understanding that the language as originally proposed would have effectively precluded many small employers from purchasing aggregate stop loss policies because attachment points calculated on a per individual basis would result in significantly higher costs for coverage. The changes to the language in this section also address a terminology comment that BSBCVT raised.
- 3) BCBSVT commented that the proposed rule be clarified whether the prohibition from excluding individual members from excess loss coverage applies to employers and insurance companies alike, or whether it applies only to insurance companies. After reviewing the comment and the language contained in the proposed rule, the Department concluded that no changes to the rule are necessary for clarification purposes. The proposed language in section 4.A.e is clear that an issuer that provides stop loss coverage to a small employer may not exclude individual members participating in the underlying group health plan from the excess loss coverage being underwritten. The prohibition applies to an issuer, regardless of whether the desire to exclude individual members is initiated by an employer. If an employer submits an application to an issuer for stop loss coverage that excludes individual members of the employer’s underlying group plan, the issuer may not write that policy.
- 4) BCBSVT commented in Comments (4)-(6) that certain technical clarifications were needed to Section 5 of the proposed rule. The Department agreed that amendments to Section 5 would be helpful, and made changes intended to provide clarity to that section’s disclosure requirements.
- 5) In Comments (7) and (8), BCBSVT suggested that the acknowledgement required in Sections 5.C and 5.D should be placed in the application, rather than the policy. The Department agreed with the suggestions and made changes accordingly.
- 6) BCBSVT expressed concern regarding the proposed rule’s “effectiveness” section. The Department agreed that the effective date of the rule should be a date certain. The Department amended the effective date to a date certain.

SIIA COMMENTS:

- 1) SIIA commented that the small employer individual attachment points should remain unchanged. The Department did not make any changes to the proposed rule in response to this comment. The Department finds that the changes to the attachment points are necessary to appropriately reflect dollar amounts adjusted for inflation and trends. Additionally, the attachment points were adjusted by Order of the Commissioner 16-020-1, and it is necessary to update the regulation to reflect the adjustments.
- 2) SIIA suggested that individual attachment points increase by \$1,000 increments, rather than the \$100 increments contained in the proposed rule. The Department did not make any changes in response to this comment. The existing regulation (H-2009-02) requires that any adjustments to the individual attachment points be made in \$100 increments.
- 3) SIIA suggested the removal of the lasering prohibition contained in Section 4(e) of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment. The Department believes that the proposed rule provides a compromise in that it allows flexibility to meet “unique risk needs,” without excluding individuals from a plan entirely, by allowing small employers to increase attachment points for individuals (subject to disclosure). The proposed rule also allows large employers to continue to laser out individuals entirely (subject to disclosure).