Thank you for the opportunity to provide comments on the ERISA (B) Working Group’s (“Working Group”) white paper entitled, Stop Loss Insurance, Self-Funding and the ACA. Please accept these comments on behalf of Cigna, UnitedHealth Group, Trustmark, Zurich North America and American Fidelity.

As you know, employers of all sizes understand the benefits of providing health care to their employees. At the same time, they are struggling with escalating medical costs and are looking for ways to make sure they are providing benefits best suited to meet their employees’ needs. It is critical that, in order to permit employers to continue to provide benefits to their employees, all options, including self-funded options remain available to employers. For those employers who choose to self-fund their health care costs, stop loss plans play a crucial role in allowing them to reasonably limit their claim exposure.

We support the Working Group’s efforts to ensure that, like all insurers, stop loss carriers act responsibly in the marketplace. We agree that stop loss carriers should adhere to all applicable laws and regulations, and that they should have transparent marketing and sales practices which require a clear understanding of the benefits and risks of self-funding, with or without stop loss protection. We offer these comments for your consideration to (1) identify technical inaccuracies in the white paper draft and (2) provide additional context for regulators as they consider how to regulate stop loss products in their marketplaces.

There are several areas within the white paper where it appears the Working Group considers stop loss payments to be a loan to the employer. This is not correct. A stop loss policy is an insurance policy which reimburses the employer for claims it is obligated to pay on behalf of its employees. Because of the application of DOL claim regulations on prompt payment with significant high-dollar claims, employers both large and small may need special interaction with their claims administrator and carrier to ensure that appropriate funds are available at the appropriate time. This is not a loan. While some carriers may advance funds in these circumstances, payments are never made in excess of what the stop loss carrier will be responsible for reimbursing, and hence are not technically loans in any case. We hope that the Working Group will consider making changes throughout the entire white paper to clarify this important point which distinguishes an insurance contract from a loan.

In addition, we respectfully request that the Working Group revise the white paper to reflect the facts that stop loss carriers do not: (1) cancel policies mid-term (except for non-payment of premium) (See, Section V); (2) make care management, UR, or medical necessity decisions; or (3) rescind policies without cause (See Section VI).

With respect to cancellations, as with all other insurance contracts, carriers may not cancel a plan mid-term, except for non-payment of premium. It must be kept in mind, as noted above, that the stop loss policy insures an employer against the employer's losses and is designed to protect financial liability of the employer. It operates like any other state-approved insurance policy and is subject to the same state laws and regulations regarding unfair trade practices. Stop loss carriers who violate those provisions should be sanctioned in precisely the same manner as any other carrier who violates the same requirements. There is nothing to indicate that stop loss as a product is more susceptible to unfair trade practices than any other line of state regulated insurance business.
In addition, the white paper erroneously levies criticism at the stop loss industry by alleging that carriers throughout the industry are stepping into the shoes of the employer and are making medical care management, utilization review or medical necessity decisions. That simply is not the case. The white paper should be very clear to note that if this occurs it does so in only a very small portion of the industry. It is not an industry norm or standard and those carriers who do make care management, utilization review or medical necessity decisions by substituting their determinations for those of the employer are overstepping their roles. In fact, the industry in general is quite vigilant to ensure that all care management, utilization review or medical necessity decisions are those of the employer.

The white paper also warns that some stop loss policies have rescission provisions. It is important to note in the white paper that stop loss contracts only enforce these provisions to the extent that the underwriting data relied upon in agreeing to the contract is materially inaccurate. And, even in these limited cases, the stop loss insurer will typically only modify the contract to account for the revised underwriting data. While this may result in a new rate, the new rate is based on the application of the appropriate underwriting data – and not a breach of any rate guaranty, as is implied in Section VI.

We also believe that the white paper could benefit from additional context around two key issues related to the relative sophistication of small employers versus large employers and the prevalence of lasering in the marketplace.

We fully support the concept of educated purchasers. There are many benefit consultants and brokers who are well-versed in these areas and all employers regardless of size should be urged to obtain advice when making the decision whether or not to self-fund. Throughout the white paper, however, there is a theme that small employers are unsophisticated. This is an oversimplification of the marketplace. While it is generally true that large employers are sophisticated purchasers, the corollary that small employers are not is incorrect. There are numerous factors that make self-funding with stop loss the right (or wrong) choice for employers of all sizes. Managing a self-funded benefit plan is both capital and labor intensive, and the employer must be engaged and vested in the administration of the benefits in order to successfully self-fund. Stop loss carriers generally work consultatively with employers of all sizes and their brokers and consultants to select the funding arrangement that fits the employers’ risk tolerance and benefit plans – whether self-funded or fully insured. In all cases recommendations are made in conjunction with the employer’s broker or consultant, who provides guidance to the client around the appropriateness of self-funding their benefit program and specific recommendations for individual and aggregate stop loss options.

There are instances where stop loss carriers will independently determine that an employer is not an appropriate candidate for self-funding. Employers, both large and small, who are not sophisticated or who are not fully committed to a self-funded arrangement should not do so – either with or without stop loss protection. Stop loss carriers share a goal to provide employers with protection for their financial liability and the right insurance solution to fit their unique needs and business tolerances. Stop loss carriers attempt to ensure that the employer, regardless of size, is not taking on risk for which that employer is unprepared. We request that the white paper be amended to add information about the importance of the role of the broker in the stop loss sales process and remove references that characterize small employers as unsophisticated.

We suggest that the concept of lasering has been misunderstood. Initially, it bears remembering that the stop loss policy is a policy between the carrier and the employer, developed to permit the employer to protect its financial risk or exposure. It is not a health insurance policy, and coverage under a stop loss reimbursement policy does not directly impact coverage to employees.

As with other forms of insurance, stop loss insurance policies are purchased to protect against future, contingent unknown risks. In situations where carriers are aware of existing risks, the casualty carrier will generally take one of two actions. Either the known, existing risk will not be covered, or if the client wishes, it can be covered at additional premium. This in no way impacts whether the employer will be responsible for payment of the underlying claim. It only impacts the level of protection that employer will receive from the
stop loss carrier for its financial risk or exposure. It has no effect on the level of protection that the employee is expecting through his participation in the employer’s health plan. Given that in these circumstances, by definition, the employer is aware of the known risk, the decision to cover the risk directly or include additional premium is a clear one that can, and as a general market practice is, made by and between the employer and its broker or consultant.

Across all lines of insurance it is acknowledged that some risks cost more to insure than others. And, while in the context of stop loss, an employer may be subject to a higher rate as a result of the laser, the employee will continued to be covered by the employer’s plan, at the same price as other employees in the plan regardless of their medical status. It is our hope that the Working Group will clarify the white paper to reflect that lasering is not a practice that is applied universally. In fact, it is relatively rare and it does not have the effect of denying access to care or raising costs for individual employees who may have a higher than normal claim experience.

On behalf of all of our companies, we thank you again for the opportunity to provide comments on this issue, which is critical to maintaining access to health benefits for employers and employees. Please feel free to contact any of us if you have any questions or if we can provide you with any more information.

Sincerely,

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<th>Organization</th>
<th>Name</th>
<th>Title</th>
<th>Contact Information</th>
</tr>
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<tbody>
<tr>
<td>Cigna Healthcare</td>
<td>Amy Lazzaro</td>
<td>VP State Public Policy and Regulatory Affairs</td>
<td><a href="mailto:Amy.Lazzaro@cigna.com">Amy.Lazzaro@cigna.com</a></td>
</tr>
<tr>
<td>UnitedHealth Group</td>
<td>Randi Reichel</td>
<td>VP Regulatory Affairs</td>
<td><a href="mailto:Randi_Reichel@uhg.com">Randi_Reichel@uhg.com</a></td>
</tr>
<tr>
<td>Trustmark Life Insurance Company</td>
<td>Catherine Bresler</td>
<td>VP, Counsel – Government Relations</td>
<td><a href="mailto:Catherine.Bresler@trustmarkins.com">Catherine.Bresler@trustmarkins.com</a></td>
</tr>
<tr>
<td>Zurich North America</td>
<td>Seema Taneja</td>
<td>AVP, State Government &amp; Industry Affairs</td>
<td><a href="mailto:Seema.Taneja@zurichna.com">Seema.Taneja@zurichna.com</a></td>
</tr>
<tr>
<td>American Fidelity Corporation</td>
<td>Barry Koonce</td>
<td>Chief Government Affairs Officer</td>
<td><a href="mailto:Barry.Koonce@americanfidelity.com">Barry.Koonce@americanfidelity.com</a></td>
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