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STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Representative William J. Lippert Jr., Chair, House Committee on Health Care
Senator Ann Cummings, Chair, Senate Committee on Finance
Senator Virginia "Ginny" Lyons, Chair, Senate Committee on Health and Welfare

FROM: Legislative Committee on Administrative Rules

DATE: December 16, 2021

SUBJECT: Concerns Related to the Health Care Stop Loss Insurance Rule

The Legislative Committee on Administrative Rules (LCAR) reviewed Health Care Stop Loss Insurance (H-2009-02) (Revised) (Health Care Stop Loss Insurance Rule) at LCAR's December 2, 2021 meeting. After the Department of Financial Regulation (DFR) filed its final proposed rule with LCAR (filing available [here](#)), it continued "working with stakeholders to resolve outstanding objections to the [f]inal [p]roposed [r]ule [and] added language allowing stop loss insurers to offer stop loss coverage to existing clients with 25 or fewer employees at otherwise applicable attachment points for small employers." [Letter from S. Arduengo, Nov. 30, 2021](#) (enclosing Health Care Stop Loss Insurance Rule with proposed modifications). LCAR eventually approved the version of the Health Care Stop Loss Insurance Rule that was sent to LCAR on November 30, 2021 and presented by DFR on December 2, 2021.

During its deliberations on the Health Care Stop Loss Insurance Rule, LCAR heard testimony from DFR and the Office of the Health Care Advocate regarding three concerns related to the provision of health care stop loss insurance. First, there is concern about adverse selection affecting small group plans available through Vermont Health Connect when small employers choose to self-insure, likely taking healthier lives out of the Vermont Health Connect market and leaving a sicker (and thus more expensive) risk pool. Second, the State is preempted under the Employee Retirement Income Security Act of 1974 (ERISA) from regulating self-insured plans, which means that State insurance provisions and consumer protections do not apply and the plans are outside the reach of DFR's regulatory oversight. Third, it appears that there is limited availability of individuals and businesses to advise small employers who are looking for information on providing health insurance to their employees.

Because these concerns are outside the jurisdiction of LCAR but are within the jurisdiction of certain standing committees, DFR requested that these concerns be referred to your committees, *see* Letter from S. Arduengo, Nov. 30, 2021, and LCAR agreed. Accordingly, LCAR requests that the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance review, during the 2022 legislative session, the effects on the Vermont Health

Connect risk pool when small employers choose to self-insure; the State benefit mandates, consumer protections, and regulatory processes that do not apply to self-insured plans due to ERISA preemption; and the options available to small employers seeking guidance on providing health insurance to their employees.