FINAL PROPOSED RULE # 21-P13

Administrative Procedures – Final Proposed Rule Filing

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 filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

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

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

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:

Health Care Stop Loss Insurance (H-2009-02)

/s/ Michael S. Pieciak , on 09/29/2021

(signature) (date)

Printed Name and Title:
Michael S. Pieciak
Commissioner of Financial Regulation

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ 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 Minutes
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:
   Health Care Stop Loss Insurance (H-2009-02)
2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
   21P-013
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: E. Sebastian Arduengo

   Agency: Department of Financial Regulation

   Mailing Address: 89 Main Street, Montpelier, VT 05620 - 3101

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   Web URL*(WHERE THE RULE WILL BE POSTED)*:
   https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment
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, VT 05620 - 3101

   Telephone: 802 461 - 6949 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, 6015

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:
Under 8 V.S.A. §§ 15 and 6015, the Commissioner has authority to regulate entities, including captive insurers, that directly or indirectly underwrite, stop-loss insurance policies for self-insured employers.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (**150 WORDS OR LESS**):
The proposed amendments to the rule:
1) increase minimum annual attachment points for claims incurred per individual;
2) increase the minimum annual aggregate attachment points; and
3) limit higher attachment points for any individual or group of individuals within small employer groups to three times the attachment point chosen for the policy.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:
The 2017 amendments to the rule required the Department to commission an actuarial study of appropriate attachment points every three years.
On December 18, 2020, the Department's contract actuary completed its study and recommended increasing minimum annual attachment points for claims incurred per

individual to $33,200 and increasing annual aggregate attachment points for small employers to $33,200.

In response to a trend of very small employers self-insuring since 2017, the Department's contract actuary performed additional analysis related to employers with 25 or fewer employees. With respect to these employers, the Department's contract actuary recommended increasing minimum annual attachment points for claims incurred per individual to $40,000 and increasing annual aggregate attachment points for small employers to $40,000.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The proposed amendments to the rule were recommended by the Department's contract actuary, who has determined that increasing stop-loss attachment points as described above appropriately reflects inflation factors and increased medical spending while ensuring that employers retain an adequate amount of claims risk.

The Department also performed a market analysis of stop-loss regulation in other jurisdictions, particularly those that have prohibited the sale of stop-loss policies to small employers. The Department concluded that pursuing a similar policy would likely cause undue disruption to Vermont employers in the aftermath of the COVID-19 pandemic.

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

Vermont Department of Financial Regulation;

Green Mountain Care Board;

Small employers who provide or are considering providing self-insured health benefits to their employees;

Certain insurance providers and brokers; and

Employees of small employers;

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

The amendment will bring individual and aggreate attachment points for stop-loss insurance plans in line with inflation and medical trend while leaving it economically viable for

small employers, particularly those with low expected claims levels, to self-insure.

To the extent that the amendment affects health insurance premiums on Vermont's health benefits exchange, the Department anticipates that there will be little to no impact. The amendment increases the average percentage of incurred claims expected to be retained by employers, reducing the financial incentive for employers to leave the exchange and self-insure.

19. A HEARING WAS HELD.

20. 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: 5/17/2021
Time: 10:00 AM
Street Address: 89 Main Street, Montpelier, VT
Zip Code: 05620 - 3101

Date: 6/9/2021
Time: 10:00 AM
Street Address: 89 Main Street, Montpelier, VT
Zip Code: 05620 - 3101

Date:
Time: AM
Street Address:
Zip Code:

Date:
Time: AM
Street Address:
Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):
7/1/2021

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

Insurance

Health Care Stop Loss Insurance

Small Employer

Small Business

Self-Insurance

VERMONT

State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964-1784
[Securities] 877-550-3907
www.dfr.vermont.gov

September 16, 2021

Re: Health Care Stop Loss Insurance (H-2009-02) (Revised); Comment Response and Changes Letter

To whom it may concern:

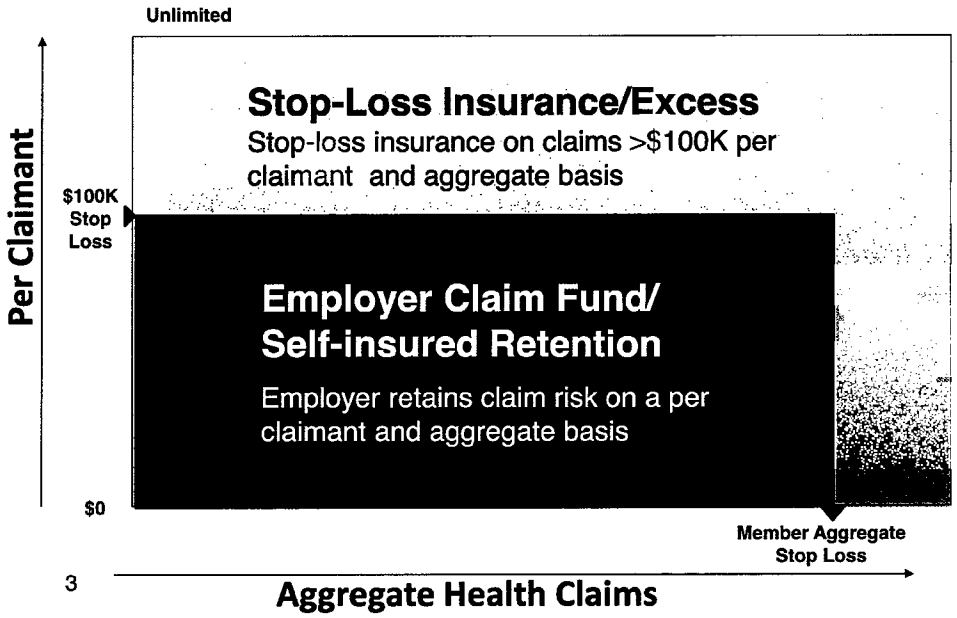
The Department of Financial Regulation submits its Final Proposed Rule titled Health Care Stop Loss Insurance (H-2009-02) to the Vermont Secretary of State and the Legislative Committee on Administrative Rules (LCAR).

The Department submitted its Proposed Rule on April 6, 2021. It held two remote public hearings via Microsoft Teams. Due to a technical issue, most stakeholders were unable to attend the first hearing, held on May 17, 2021. The Department therefore provided public notice and held a second hearing on June 9, 2021, which was attended by Michael Durkin, Paul Schultz and Sara Teachout of Blue Cross Blue Shield of Vermont (BCBSVT), Christine Cooney of Cigna, Jordan Estey of MVP Health Care, Eric Schultheis of the Office of the Health Care Advocate (HCA), Christine M. Oliver of NFP Corporate Services, Inc. (NFP), Heather F. Shouldice of William Shouldice & Associates LLC, and the Department's staff and contracted actuaries. The Department received written comment from BCBSVT, Cigna, the HCA, and Business Resource Services.

To contextualize the stakeholder comment and the Department's response, it is first necessary to describe self-insurance generally, how level funded stop-loss coverage functions, how it differs from traditional stop-loss insurance, and where it fits into the health insurance market.

By self-insuring, employers assume the risk of paying for employees' health care expenses according to the terms of the plan established by the employer. Because of the financial uncertainty inherent in self-insuring, all but the very largest employers will seek stop-loss insurance coverage to limit their exposure. Stop-loss policies typically include two key exposure-limiting components: an individual attachment point that protects against high individual claims (claim severity), and an aggregate attachment point that protects against high utilization (claim frequency). Any health care costs in excess of either the individual or aggregate attachment points will be covered by the stop loss policy. Therefore, the attachment points of a stop loss policy effectively dictate how much risk is retained by the employer and how much is transferred to the insurer as shown in the illustration below:

Traditional Self-Insurance

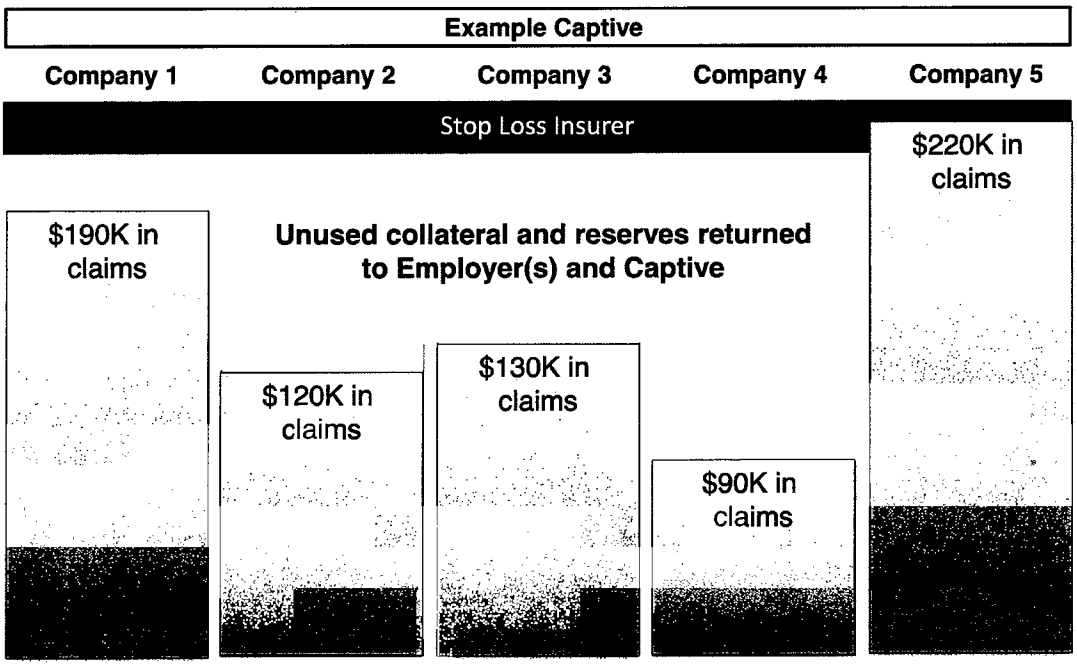


In a traditional stop-loss arrangement, the stop-loss insurance only limits a self-insured employer's annual losses, leaving them vulnerable to month-over-month claims volatility—for instance, paying $1,000 in claims one month and $10,000 the next. To address this issue, stop-loss insurers have introduced level-funded plans, in which employers pay their stop-loss insurer a set monthly amount to cover expected claims, monthly premiums, and administrative expenses. If claims come in lower than expected at the end of the plan year, the insurer will issue a refund to the employer—though it is likely that annual stop-loss premiums would still increase to reflect medical trend.[1] If claims are higher than expected, the insurer will demand a higher premium increase on renewal.

Employers can also fund their stop loss coverage by paying premium to a captive insurer, i.e., an insurance company that is wholly owned and controlled by its insured. The captive stop-loss insurer can then limit its own exposure by obtaining reinsurance from an outside insurance company. By providing reinsurance for several captive stop-loss insurers, an insurer can effectively pool the risk of providing stop-loss coverage for a group of employers. For ease of understanding, a level-funded group captive stop-loss structure is illustrated below:

[1] Medical trend represents the percentage change in health care costs prior to any measures undertaken by the plan to contain costs.

Typical Group Captive Stop Loss



As with fully insured health plans, the expected claims for stop-loss policies are actuarially developed based on a group's expected losses and each policy's attachment points. Large groups generally have enough claims experience for actuaries to credibly develop an expected claims amount. However, as group size decreases the group has less claims experience and the use of a manual rate or actuarial judgement may be necessary to determine the group's expected claims. For very small groups, "a credible estimate of expected losses may not be realistic."[2] For modeling purposes, the Department's actuaries assumed the group-specific claims experience of employers with 25 or fewer employees was 33% credible or less,[3] as shown in the below table:

[2] National Association of Insurance Commissioners, White Paper: Stop Loss Insurance, Self-Funding, and the ACA at 8 (2015), *available at* https://www.naic.org/documents/SLI_SF.pdf. In actuarial science, credibility is defined as "A measure of the predictive value in a given application that the actuary attaches to a particular body of data[.]" Actuarial Standard of Practice No. 25, § 2 (Rev. May 1, 2011), *available at* http://www.actuarialstandardsboard.org/wp-content/uploads/2015/03/asop025_143.pdf. Thus, a dataset with low credibility would have little predictive value for the purpose of developing premiums.

[3] This means that, when developing each group's expected claim amount, 33% or less weight was applied to the group-specific experience and 67% or greater weight was assigned to a manual rate, depending on group size.

Group Size	Credibility %
5	10.0%
10	17.0%
25	33.0%
50	55.0%
75	75.0%
100	90.0%

Because it is more difficult to credibly develop an expected claims amount for small employers, until level-funded group captive stop-loss gained popularity and acceptance with larger employers, insurers, third-party administrators, and brokers rarely marketed stop-loss policies to groups with fewer than 50 employees. Since the Health Care Stop Loss Insurance Regulation was last revised in 2017, however, Business Resource Services (BRS) and BCBSVT have partnered to market a level-funded group captive stop-loss product called Blue Edge Business to employers with as few as 5 employees.[4] For these small employers, fully insured small group plans—which have a guaranteed issue requirement—effectively serve as a hedge against the risk that the stop-loss insurer will increase premiums or decline to renew the policy in the face of adverse claims experience.[5]

As the Department explained in its economic impact analysis, the Proposed Rule is intended to ensure that: 1) small employers can self-insure and obtain stop-loss coverage where appropriate; 2) employers retain enough risk that they remain truly self-insured; and 3) that Vermont's health insurance exchange is protected against the risk of undue adverse selection.[6] The comments received by the Department reflect the underlying tension between these goals.

BCBSVT commented that the aggregate attachment point of $40,000 proposed by the Department would "essentially prevent" healthy groups—i.e., groups with good claims experience—from self-insuring. BCBSVT submitted the following chart illustrating the aggregate attachment point as a percentage of expected claims it estimates would be necessary to meet the attachment point proposed by the Department for nine groups it identified as being affected by the rule:

[4] *See* https://brsvt.com/blue-edge-business/.
[5] 33 V.S.A. § 1811(d)(1).
[6] In health insurance, adverse selection refers to a situation where heathier individuals do not purchase insurance while less healthy individuals do, leading to increased insurance premiums.

Deidentified Group	Contracts	Members	ASL with $40,000 min	Metal Levels Offered
Group A	4	4	229%	Gold
Group B	5	5	350%	Gold
Group C	6	6	327%	Gold
Group D	6	9	202%	Gold & Bronze
Group E	7	7	299%	Gold
Group F	7	9	207%	Gold
Group G	8	12	218%	Gold
Group H	8	12	193%	Gold & Bronze
Group I	10	10	195%	Gold

Because of the higher proposed aggregate attachment point, BCBSVT asserts that it would decline to quote these healthy groups for stop-loss coverage. As a result, BCBSVT claims that these groups would be forced to seek fully insured small group coverage, which would present a hardship to small employers as the community rate is "significantly in excess" of rates attainable in the self-funded market. While BCBSVT acknowledges this would benefit the fully insured small group market, it estimates that the market-average fully insured rates would drop by less than a tenth of a percent.

BCBSVT also claims that the Proposed Rule would be inequitable because groups with adverse claims experience would have an ASL low enough for a viable stop-loss offering, as illustrated in the below chart:

Deidentified Group	Contracts	Members	ASL with $40,000 min	Metal Levels Offered
Group 1	6	12	150%	Gold, Silver & Bronze
Group 2	6	10	150%	Gold
Group 3	6	13	150%	Gold & Bronze
Group 4	6	8	150%	Gold
Group 5	7	11	150%	Silver
Group 6	8	12	140%	Gold
Group 7	10	22	140%	Gold
Group 8	10	25	140%	Gold
Group 9	10	19	140%	Gold

In response, BCBSVT suggested amending § 4.c of the Proposed Rule to require groups of 25 employees or fewer to have an annual aggregate attachment point that is at least the greater of 120% of expected claims or $40,000, but not to exceed 150% of expected claims.

Cigna commented that the current aggregate attachment point of $28,700 should be maintained, adding that even a minimum aggregate attachment point of $20,000 represents a "significant risk" retained by employers from both a frequency and severity perspective. Cigna asserts that the Proposed Rule will limit employers' options and "potentially prohibit small groups from moving to a self-funded solution when they'd otherwise benefit from its unique funding features." Cigna expressed support for the limitations on "lasering," or setting higher attachment points for specific individuals in a group, in the Proposed Rule, commenting that limiting lasers to three times the attachment point chosen for the policy might prevent employers from taking

more risk than they can accommodate. Finally, Cigna asked the Department to clarify whether the group sizes referenced in the rule are based on "eligible employees."

The HCA commented that it supported several aspects of the Proposed Rule, including adjusting attachment points to ensure that employers retain a minimal amount of risk, limiting lasering, and having a higher aggregate attachment point for groups of 25 employees or fewer. However, the HCA added that the Proposed Rule continues to incentivize employers to self-insure by allowing employers to cede much of the risk to insurer. This, in the HCA's view, destabilizes Vermont's fully insured small group market by paving the way for healthier groups to leave the fully insured small group market, increasing premiums and cost volatility for the remaining groups.

The HCA further argues that the Proposed Rule would be bad for employers and employees because: 1) small employers largely do not have the capital reserves necessary to sustain self-insured health coverage in the highly variable risk environment associated with small groups; 2) self-insured plans can be structured to share risk among several employers and can exclude state-mandated health benefits; and 3) self-insuring "opens the door" for employment discrimination against employees with expensive health conditions.

The HCA contends that the Department did not adequately consider the broader impact of stop-loss insurance regulation on Vermont's fully insured health insurance market because the Department's contracted actuaries did not "consider or estimate whether the [Proposed Rule] will harm Vermont's efforts to realize a unified health system." The HCA characterized the report prepared by the Department's contracted actuaries as "biased" because it did not analyze factors such as "the impact of self-insurance on the employee's access to various state coverage mandates and [Affordable Care Act] Essential Health Benefits[.]"

Finally, the HCA expressed opposition to BCBSVT's suggested change to the Proposed Rule, noting that nine of the ten employer groups that BCBSVT claimed would be impacted had ten or fewer members. With so few members, the HCA argues employers would be subject to significant claims volatility and present a risk of adverse selection because employers can purchase fully insured small group coverage if it is no longer financially viable to self-insure due to adverse claims experience.

The HCA suggested amending the Proposed Rule to prohibit any form of lasering in stop-loss insurance, including prohibiting the exclusion of an employee or dependent from the plan because of disability or a preexisting condition. The HCA also suggested entirely prohibiting the sale of stop-loss insurance policies to small employers or amending § 5 of the Proposed Rule to require disclosure to small groups related to expected claims volatility and associated financial risk to employers.

NFP and Business Resource Services (BRS) commented to agree with BCBSVT's suggested amendment to the proposed rule, noting that small employers "do not have the capacity to pay more for health insurance than is absolutely necessary." BRS added that two-thirds of small employer groups would receive a refund on their 2020 claims experience, and groups that did not receive a refund "still enjoyed the benefit of lower premiums."

The Department will first address the concerns raised BCBSVT, Cigna, NFP, and BRS that increasing attachment points for small employers, particularly those with 25 or fewer employees, would prevent those employers from self-insuring. The increased attachment points were chosen by the Department based on an analysis completed by the Department's actuaries, who performed modeling to calculate the risk retained by a range of different group sizes based on estimated claim costs, the make-up of Vermont's small group market, and assuming a range of underlying medical benefits equivalent to platinum, gold, silver, and bronze metal level plans.[7] The Department's actuaries found that even with individual and aggregate attachment points adjusted to reflect 2020 medical trend and inflation—an individual annual attachment point of at least $33,200 and aggregate annual attachment point the greater of $33,200 of 120% of expected claims—Vermont employers with 25 or fewer employers would, on average, cede more than 50% of the claims risk for mid-tier plans at CY 2020 cost levels and, in some cases, retain less than 40% of the claims risk:

Table 2 – Modified Parameters at CY 2020 Cost Levels
% of Claims Expected to be Ceded with Minimum Stop Loss Coverage

	Group Size					
Metal Level	**5**	**10**	**25**	**50**	**75**	**100**
Bronze	60.8%	62.1%	57.0%	53.6%	52.0%	51.0%
Silver	58.4%	57.4%	52.2%	49.0%	47.6%	46.7%
Gold	55.0%	52.4%	47.5%	44.7%	43.5%	42.7%
Platinum	50.9%	47.6%	43.2%	40.6%	39.6%	39.0%

The Department therefore asked its actuaries to perform an additional analysis related to employers with 25 or fewer employees assessing: 1) whether employers would be expected to retain more than 40% of claims risk on average at all metal levels; and 2) the projected impact to minimum required individual and aggregate attachment points by employer size. To enhance the credibility of the analysis, the Department's actuaries ran 100,000 simulations for 5, 10, and 25-person groups at the bronze, silver, gold, and platinum metal levels. The Department's actuaries found that increasing the minimum individual attachment point to $40,000 and the minimum aggregate attachment points to the greater of $40,000 or 120% of expected claims would result in small employer groups retaining 40% of claims risk on average.

Because this analysis focused on smaller groups with less credible group-specific claims experience, there is significant variation in retained risk and aggregate attachment points between group sizes and metal levels. For instance, of 100,000 simulated 5 person groups at the bronze metal level, 60,529 required aggregate attachment points above 200% of expected claims, as shown below:

[7] "Metal levels" correspond to different "actuarial values" (AV), the expected percentage of a group's claims that are covered by the health plan under the ACA. Bronze plans are expected to cover, on average, 60% of a group's claims; silver plans, 70%; gold plans, 80%; and platinum plans, 90%. *See* 42 U.S.C. § 18022(d)(1).

Table 6 – Group Size 5 – Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	2,596	51.4%	20.2%	28.4%
130%-139%	2,684	51.4%	16.6%	32.1%
140%-149%	3,888	49.9%	14.8%	35.3%
150%-159%	4,914	46.5%	14.3%	39.2%
160%-169%	5,813	47.9%	12.1%	39.9%
170%-179%	6,422	47.1%	11.1%	41.8%
180%-189%	6,595	43.9%	10.3%	45.8%
190%-199%	6,559	42.9%	9.0%	48.1%
200%+	60,529	36.1%	7.1%	56.8%
Total	**100,000**	**44.4%**	**11.8%**	**43.8%**

At the gold metal level, however, only 16,524 of the 100,000 simulated 5 person groups required aggregate attachment points above 200% of expected claims:

Table 6 – Group Size 5 – Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	34,946	41.0%	16.0%	43.0%
130%-139%	9,978	36.6%	13.7%	49.7%
140%-149%	9,194	33.6%	12.9%	53.5%
150%-159%	7,952	34.1%	12.0%	53.9%
160%-169%	6,972	30.0%	11.0%	59.0%
170%-179%	5,678	30.4%	10.3%	59.3%
180%-189%	4,886	27.6%	9.8%	62.6%
190%-199%	3,830	30.6%	9.0%	60.3%
200%+	16,564	22.6%	7.4%	70.0%
Total	**100,000**	**37.2%**	**14.1%**	**48.7%**

As group size increases, even to 10 people, the claims experience is more credible and less variable, resulting in the overwhelming majority of the simulations requiring aggregate attachment points between 120 and 129% of expected claims:

Table 6 – Group Size 10 – Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	98,911	37.5%	12.2%	50.3%
130%-139%	554	16.2%	6.1%	77.7%
140%-149%	271	20.2%	2.9%	76.9%
150%-159%	122	0.0%	1.5%	98.5%
160%-169%	73	0.1%	3.5%	96.4%
170%-179%	38	0.0%	0.0%	100.0%
180%-189%	12	0.0%	0.0%	100.0%
190%-199%	12	0.0%	0.0%	100.0%
200%+	7	0.0%	0.0%	100.0%
Total	**100,000**	**37.5%**	**12.2%**	**50.4%**

Thus, to the extent that the attachment points for employers with 25 or fewer employees in the Proposed Rule will result in aggregate attachment points for certain employers that are not commercially viable, this is primarily due to the high claims variability inherent in small groups, especially those with a handful of members. BCBSVT's proposed solution—to modify the aggregate attachment point for employers with 25 or fewer employees to at least the greater of 120% of expected claims or $40,000 not to exceed 150% of expected claims—would result in the smallest employers retaining less claims risk than would be projected under the Department's proposal, as shown in the table below:

5 Employee Groups - Estimated Ceded Claims as a Percent of Total Claims

Metal Level	DFR Proposal	BCBSVT Proposal
Bronze	56.2%	62.0%
Silver	54.1%	56.8%
Gold	51.3%	52.5%
Platinum	47.9%	48.3%

As noted by the U.S. Department of Labor, unduly low attachment points for stop-loss insurance "effectively [give] nearly all the risk protection of a conventional health insurance policy without the consumer protections required for such policies."[8] Accordingly, the Proposed Rule sets stop-loss attachment points to ensure that even the smallest self-funded employers retain a meaningful level of risk (i.e. are truly self-insured), even if it increases costs or alters incentives for certain employers.

The Department will next address the HCA's contention that the Department did not adequately consider the broader impact of stop-loss insurance on the fully insured market. The long-term

[8] U.S. Dep't of Labor, T.R. 2014-01 at 2 (Nov. 6, 2014), *available at* https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/guidance/technical-releases/14-01.pdf.

enrollment trends in the small group market do not require sophisticated actuarial modeling to parse. Fully insured small group enrollment in Vermont has declined from a high of 51,839 covered lives in 2016 to 40,617 covered lives in March 2021.[9] Because Vermont employers with over four employees are required to either provide health coverage or pay a tax assessment,[10] it is likely that many of these lives are currently in self-insured plans. Indeed, BCBSVT's own annual reports show that, since 2016, it has added over 10,000 covered lives to the self-insured plans it administers.[11]

The reasons for the decline in small group enrollment are similarly apparent. Since at least 2014, premium increases for Affordable Care Act (ACA)-compliant plans have outpaced Vermont real wage growth and gross domestic product (GDP) growth, creating what the HCA has termed an "affordability crisis."[12] Many employers, therefore, have opted to self-insure as an alternative to providing fully insured health coverage to employees. According to the Kaiser Family Foundation, in 2020, 23% of covered workers in "small firms," defined as employers with 3-199 employees, and 84% of covered workers in "large firms," defined as employers with more than 200 employees, are enrolled in self-funded health plans nationally.[13] Because the federal Employee Retirement and Income Security Act of 1974 (ERISA) preempts states from requiring many self-insured plans to provide state-mandated benefits, employers can save money by offering less robust benefit packages than would be permissible in a fully insured plan. Additionally, stop-loss policies are generally subject to medical underwriting, unlike fully insured health plans.[14] Thus, employers with relatively healthy employee pools can benefit from even more cost-savings, since fully insured small group plans are community rated.[15]

An administrative rule regulating health care stop loss insurance can neither address the factors underlying increased insurance premiums nor require self-insured plans to cover state-mandated benefits.[16] To stabilize the small group insurance market, the Department seriously considered prohibiting lasering altogether and the sale of stop-loss policies to small groups, as New York and Delaware have done.[17] Ultimately, however, Department concluded that self-insured small employers had a reliance interest in continued access to stop-loss coverage, especially in light of the ongoing COVID-19 public health emergency. The Proposed Rule therefore represents a solution that allows small employers continued access to stop-loss coverage, with restrictions on

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[9] Kaiser Family Foundation, Market Share and Enrollment of Largest Three Insurers – Small Group Market, *available at* https://www.kff.org/other/state-indicator/market-share-and-enrollment-of-largest-three-insurers-small-group-market; Department of Vermont Health Access, 2021 Benefit Map at 1 (March 2021), *available at* https://dvha.vermont.gov/budget-legislative-and-rules/reports-and-studies.

[10] *See* 32 V.S.A. ch. 245.

[11] BCBSVT's annual reports are available from its website at: https://www.bcbsvt.com/financials.

[12] Office of the Health Care Advocate, The Cost of Health Insurance: Quantifying the Vermont Affordability Crisis (February 2018), *available at* https://www.vtlegalaid.org/sites/default/files/HCA-The-Cost-of-Health-Insurance-Quantifying-the-Vermont-Affordability-Crisis_V3.pdf.

[13] Kaiser Family Foundation, Employer Health Benefits 2020 Summary of Findings at 2 (2020), *available at* https://files.kff.org/attachment/Summary-of-Findings-Employer-Health-Benefits-2020.pdf.

[14] *See* 33 V.S.A. § 1811(f)(1)(D).

[15] 33 V.S.A. § 1811(f)(1).

[16] Because the ACA requires health insurers to spend at least 80% of premiums on health care, health insurance premium increases are highly correlated with increases in the cost of care. *See* 45 C.F.R. § 158.210.

[17] Del. Code Ann. 18 § 7218; N.Y. Ins. Law §§ 3231 & 4317.

lasering similar to those in Connecticut, and increased attachment points,[18] to ensure that self-funded plan sponsors retain meaningful risk.

To the extent that the HCA argues that mere availability of stop-loss insurance coverage "opens the door" for self-insured employers to discriminate against employees with medical conditions, the Department disagrees. First, as explained above, most employees in self-insured plans are in plans sponsored by large employers which often have nondiscrimination policies and would likely self-insure even without a stop-loss insurer to limit their financial exposure. Second, and more importantly, ERISA prohibits discrimination against plan participation based on health factors, including: health status, medical condition, claims experience, and disability.[19] Finally, nondiscrimination provisions in federal laws including the ACA, Mental Health Parity and Addiction Equity Act, Newborns' and Mothers' Health Protection Act, and Women's Health and Cancer Rights Act apply to employees participating in ERISA health plans and are enforced by the Employee Benefits Security Administration (EBSA) and Equal Employment Opportunity Commission (EEOC) of the U.S. Department of Labor. These federal protections adequately protect employees with disabilities, mental health needs, or preexisting medical conditions.

The Department will last clarify how employees are defined in the Proposed Rule. Consistent with 33 V.S.A. § 1804, the Department intended employees to be calculated using the method set forth in 26 U.S.C. § 4980H(c)(2), excluding part-time employees or seasonal workers as defined in 26 U.S.C. § 4980H(c)(2)(B). To prevent any confusion, the Department will add this definition to the Proposed Rule.

The Department thanks members of the public who attended the public hearing and/or submitted written comments for their attention and diligence in the rulemaking process during these challenging times. It bears repeating that the Proposed Rule represents a balancing of competing interests that does not give any one stakeholder everything they want.

Sincerely,

/s/ E. Sebastian Arduengo

E. Sebastian Arduengo
Assistant General Counsel
Department of Financial Regulation

[18] *See* Ct. Ins. Bul. HC-126, *available at* https://portal.ct.gov/-/media/CID/1_Bulletins/Bulletin-HC-126.pdf.
[19] *See* 29 C.F.R. § 2590.702.

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

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.

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1. TITLE OF RULE FILING:
   Health Care Stop Loss Insurance (H-2009-02)
2. ADOPTING AGENCY:
   Department of Financial Regulation
3. 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** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):
   SOS Log# 17P033; Last adopted: 4/6/2018.

State of Vermont
Agency of Administration
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Montpelier, VT 05609-0201
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Office of the Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: February 8, 2021
Members Present: Chair Kristin Clouser, Ashley Berliner, Diane Bothfeld, Jennifer Mojo, John Kessler, Matt Langham, Diane Sherman and Clare O'Shaughnessy
Members Absent: Dirk Anderson
Minutes By: Melissa Mazza-Paquette

- 2:02 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the December 14, 2020 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
    - Note from agenda: An emergency rule titled 'Emergency Administrative Rules for Remote Hearings for the Board of Medical Practice' by the Department of Health was supported by ICAR Chair Clouser on 1/22/21.
- No public comments made.
- Presentation of Proposed Rules on pages 2-13 to follow.
    1. Rules Governing the Licensing of Educators and the Preparation of Educational Professionals, Vermont Standards Board for Professional Educators, page 2
    2. Health Care Stop Loss Insurance (H-2009-02), Department of Financial Regulation, page 3
    3. Health Benefits Eligibility and Enrollment Rule, General Provisions and Definitions (Part 1), Agency of Human Services, page 4
    4. Health Benefits Eligibility and Enrollment Rule, Financial Methodologies (Part 5), Agency of Human Services, page 5
    5. Health Benefits Eligibility and Enrollment Rule, Eligibility and Enrollment Procedures (Part 7), Agency of Human Services, page 6
    6. Health Benefits Eligibility and Enrollment Rule, State Fair Hearings and Expedited Eligibility Appeals (Part 8), Agency of Human Services, page 7
    7. Rules Governing Medication-Assisted Treatment for Opioid Use Disorder, Agency of Human Services, Department of Health, page 8
    8. 10 V.S.A. App. § 122. Fish Management Regulation, Department of Fish and Wildlife Board, page 9
    9. Home Health Services, Agency of Human Services, page 10
    10. Durable Medical Equipment, Agency of Human Services, page 11
    11. Medical Supplies, Agency of Human Services, page 12
    12. Applied Behavior Analysis Services, Agency of Human Services, page 13
- Next scheduled meeting is March 8, 2021 at 2:00 p.m.
- 3:35 p.m. meeting adjourned.

Proposed Rule: Health Care Stop Loss Insurance (H-2009-02), Department of Financial Regulation

Presented By: Sebastian Arduengo

Motion made to accept the rule by Diane Bothfeld, seconded by John Kessler, and passed unanimously except for Diane Sherman who abstained, with the following recommendations:

1. Proposed Rule Coversheet, #10: Reference #8 of the Economic Impact.
2. Adopting Page #4: Include title.
3. Economic Impact Analysis #6: Missing word in last sentence.
4. Economic Impact Analysis: Include risk analysis for consideration as discussed during the meeting.
5. Public Input #3: Update language as it refers to a third party administrator rule.
6. Public Input #4: Include website address.
7. Public Input #4: Be consistent with how meetings will be conducted. Here it states via Teams yet in the Proposed Rule Coversheet it lists a physical address for a meeting.
8. Incorporation by Reference: This form is not needed as it references Vermont state statute.

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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1. TITLE OF RULE FILING:

   Health Care Stop Loss Insurance (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

   Insurance Providers

   Small Employers

   Employees of Small Employers

   Green Mountain Care Board

4. IMPACT ON SCHOOLS:

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

None anticipated.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

   Because the Department does not anticipate any impact to local school districts, alternatives to the rule that could reduce or ameliorate costs to local school districts were not considered.

6. IMPACT ON SMALL BUSINESSES:

   INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

   In the 3 years since the Department last amended the rule, stop-loss insurers have started marketing plans to employers with as few as 5 employees. For employers with so few covered lives, stop-loss insurers could expect to retain approximately 60% of the claims risk at the bronze and silver metal levels.

   As with high-deductible health plans, stop-loss plans have relatively low premiums, incentivizing very small employers that provide employee health benefits to leave the exchange and self-insure. However, stop-loss premiums are based on the average dollar value of claims expected per employee per month, and can vary dramatically based on past claims. If and when premiums increase, stop-loss plans become relatively unaffordable and employers either stop offering health benefits or go back on to the exchange—creating an adverse selection problem.

   With this amendment to the stop-loss rule, the Department seeks to strike a balance between giving small employers flexibility to choose a self-insured health plan and protecting the exchange against adverse selection. To mitigate the risk of adverse selection against the exchange, the amendment increases minimum aggregate attachment points for small employers from

$28,700 to $33,200 or $40,000 for employers with 25 or fewer employees.

Please also see answer to question 8, below, and the attached actuarial study.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The rule applies to entities that provide stop-loss insurance coverage to self-insured employers, none of which are small businesses. Therefore, an analysis of small business compliance is inappropriate.

8. COMPARISON:

COMPARE THE 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 Department considered several alternatives to the amendment, based on its contract actuary's analysis of Vermont's stop-loss market, including doing nothing—which would have resulted in some employers bearing less than half the risk of self-insuring due to inflation since 2017.

Minnesota, New Hampshire, and Rhode Island, which have similar rules regulating stop-loss insurance, require a minimum individual attachment point of at least $20,000. At least two states, Delaware and New York, entirely prohibit insurers from selling stop-loss policies to small groups—defined as employers with 15 or fewer employees in Delaware and employers with 50 or fewer employees in New York. The Department considered adopting a similar policy, but determined that it would be unduly disruptive to small employers, espicially those who already self insure, in light of the COVID-19 pandemic.

The alternative the Department has chosen is actuarially supported, and will continue to allow small employers to provide self-insured health benefits to their employees if they so choose. Because the percent of claims expected to be ceded by employers who choose to self-insure will be substantially similar to what it

was when the rule was last amended in 2017, the amendment will not substantially increase the economic burdens on small businesses that choose to self-insure.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*
This economic impact analysis is sufficient since the amendment is based on the recommendations of its contract actuary. The cost of the substantive changes to small employers will be minimal and work to ensure that self-funding employee health benefits remain affordable to small employers while protecting the exchange against the risk of adverse selection.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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1. TITLE OF RULE FILING:

   Health Care Stop Loss Insurance (H-2009-02)

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
   None.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
   None.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
   None.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
   None.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
   None.

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
   None.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*
   The amendment is not expected to have any environmental impact. Therefore, this analysis is sufficent.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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1. TITLE OF RULE FILING:

   Health Care Stop Loss Insurance (H-2009-02)

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

   From the Department's past rulemaking experience, in addition to the APA-required notice and hearing requirements, the Department will continue to communicate with stakeholders and the public about the stop-loss rule. The Department will ensure that all materials pertinent to this rule will be available online and in paper form in the event that interested individuals do not have internet access.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

   The rule will be posted on the Department's website. In addition to ensuring the availability of materials relating to this rule online and in paper form, the Department will work with stakeholders to educate members of the public.

   The rule can be found on the Department's website at the following URL: https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment.

   Due to the ongoing COVID-19 pandemic, the rule's public hearing will be conducted via Microsoft Teams. Call-in

information for the meeting is included in the APA forms and will be posted on the Department's website.

In addition, the Department has individually reached out to stakeholders who parcipated in the rule's last amendment in 2017. Responses submitted to the Department are appended to this filing.

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

1) Christine Cooney - CIGNA;

2) Rebecca Heintz - Blue Cross/Blue Shield;

3) Christine Oliver - NFP;

4) James Slotnick - Sun Life;

5) Caren Alvarado - Crum Forster;

6) Robin Lunge - Green Mountain Care Board;

7) Kevin Mullin - Green Mountain Care Board;

8) Jessica Holmes - Green Mountain Care Board;

9) Michael Fisher - Office of the Health Care Advocate.

Administrative Procedures – Scientific Information

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a brief summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

1. TITLE OF RULE FILING:

   Health Care Stop Loss Insurance (H-2009-02)

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

   Actuarial study commissioned by the Department in 2020 concerning the minimum stop loss requirements to reflect appropriate inflation factors and medical trend based on Vermont's insurance market.

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

   None.

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

   The actuarial study will be posted on the Department's website (https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment).

Administrative Procedures – Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

1. TITLE OF RULE FILING:

   Health Care Stop Loss Insurance (H-2009-02)

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE)*:

   This rule incorporates the following laws and regulations of the State of Vermont:

   Title 8, sections 15, 4080g 6015; Title 33 section 1811 of the Vermont Statutes Annotated (V.S.A.).

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE: 8 V.S.A. §§ 15, 4080g, 6015; 33 V.S.A. § 1811.

5. OBTAINING COPIES: *(EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST)*:

   All of the cited materials are available online at the following links:

   Vermont Statutes Annotated:

   https://legislature.vermont.gov/statutes/

Incorporation By Reference

Although all cited materials are readily available online, members of the public may obtain printed copies by contacting the Department by phone at 802-828-3301.

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED)*:

No modifications have been made to the cited material.

Run Spell Check

OLIVER WYMAN

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Mr. Phil Keller
Director of Insurance Regulation
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

December 18, 2020

Vermont Minimum Stop Loss Attachment Points

Dear Phil:

Per Section 4(B) of Vermont Regulation H-2009-02 (Revised), the Commissioner of the Department of Financial Regulation (the Commissioner) may adjust the dollar amounts associated with Vermont's minimum stop loss requirements to reflect appropriate inflation factors and medical trend. Section 4(A) of this regulation currently sets the minimum attachment point parameters as follows:

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 $28,700;*
- *b) Have an annual aggregate attachment point, for Small Employers, that is at least the greater of:*
  - *i. 120 percent of expected claims; or*
  - *ii. $28,700.*
- *c) Have an annual aggregate attachment point, for any groups other than Small Employers, that is at least 110 percent of expected claims;*
- *d) Not provide direct coverage of health care expenses of an individual; and*
- *e) For Small Employers, not exclude from coverage any individual or group of individuals who are covered by the underlying group health plan.*

The regulation also states that any amended values must be in increments of $100 and must be published at least six (6) months prior to the effective date of the change. Oliver Wyman has been asked to assist in determining the actuarially appropriate adjustments to make to the dollar amounts described above such that they reflect the impact of inflation and medical trend that has occurred since the regulation was last revised. The purpose of this letter is to outline the analysis we've undertaken and to present our results.

Recommendation

Based on our analysis, which is described in detail in the following section of this letter, to account for the impact of medical trend and inflation that has occurred since Vermont Regulation H-2009-02 (Revised) was last revised, it is recommended that the dollar amount associated with the minimum attachment point parameters set forth in Section 4(A) of the regulation be modified as follows (changes in bold):

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 **$33,200**;*
b) *Have an annual aggregate attachment point, for Small Employers, 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 any groups other than Small Employers, that is at least 110 percent of expected claims;*
d) *Not provide direct coverage of health care expenses of an individual; and*
e) *For Small Employers, not exclude from coverage any individual or group of individuals who are covered by the underlying group health plan.*

Development of Recommended Changes to Minimum Attachment Points

To analyze how the dollar amounts associated with H-2009-02 (Revised) should be modified due to medical trend and inflation, we first developed claim probability distributions[1] (CPDs) representative of Vermont specific cost levels for calendar years (CYs) 2017 and 2020.[2] These CPDs were created based on the 2018 IBM® MarketScan® Research Database for nationwide members enrolled in group comprehensive medical plans. The nationwide costs from this dataset were then calibrated to reflect Vermont specific cost levels for CYs 2017 and 2020 based on a review of historical and projected allowed claims experience provided in publicly available data sources and rate filings from the two largest Vermont health insurance carriers: Blue Cross and Blue Shield of Vermont and MVP Health Plan. Altogether, the CY 2017 CPD was calibrated to an annual allowed cost per member per year (PMPY) of $5,238 and the CY 2020 CPD was calibrated to an annual allowed cost PMPY of $6,081. We note that the difference between these allowed PMPY's represent an average annual trend/inflation rate equal to approximately 5.1%, which we believe to be reasonable based on our knowledge and understanding of the Vermont health insurance market.

[1] A CPD is a table that summarizes the distribution of claims spending for a population of health insurance users
[2] The most recently established minimum attachment points were developed based on CY 2017 cost levels

After calibrating the CPDs, Monte Carlo simulation was utilized to analyze the impact the existing minimum attachment point parameters would have had in CY 2017 for a range of different group sizes (i.e., 5, 10, 25, 50, 75, 100) [3] and plan levels (i.e., Bronze, Silver, Gold, and Platinum). [4] In particular, the percentage of claims expected to be ceded by the employer under each scenario with the minimum allowed level of stop loss coverage selected was calculated. To enhance the credibility of the results, one hundred thousand (100,000) simulations were run for each grouping. Table 1 which follows provides a summary of the results from this phase of the analysis.

Table 1 – Current Parameters at CY 2017 Cost Levels
% of Claims Expected to be Ceded with Minimum Stop Loss Coverage

	Group Size					
Metal Level	**5**	**10**	**25**	**50**	**75**	**100**
Bronze	60.8%	62.3%	57.2%	53.7%	52.2%	51.1%
Silver	58.2%	57.2%	52.0%	48.8%	47.5%	46.6%
Gold	54.6%	51.9%	47.1%	44.2%	43.1%	42.3%
Platinum	50.8%	47.5%	43.1%	40.5%	39.5%	38.9%

Some items to note regarding these results include:

- The results described above are based on estimated claim costs and make-up of the overall Vermont small employer market.
- When determining the minimum Aggregate attachment point, expected claims were defined as those costs which would have been the employer's responsibility, net of member cost sharing and net of any costs ceded due to Individual Stop Loss (ISL) coverage.

- The average expected claim amount PMPY for each group was developed as follows:
    1. Based on the simulated claims results noted above, the total incurred claim amount PMPY for each group, net of any claims which would have been ceded under the ISL deductible was calculated
    2. A manual rate PMPY was developed for each group based on the average result from step 1 for all groups, adjusted to reflect the underlying demographic mix of the particular group for which the manual rate was being calculated for
    3. Utilizing the following credibility formula and corresponding credibility assumptions by group size,[5] the claim result from Step 1 was weighted with the demographic adjusted manual rate from Step 2 to determine the Expected Claims PMPY for each group:

The most recently established minimum attachment points were developed based on CY 2017 cost levels assumed to be equal to 1.8

[4] These plan levels correlate to a set of benefits chosen to produce an estimated actuarial value based on the corresponding cost levels of approximately 0.60, 0.70, 0.80, and 0.90, respectively.

[5] Credibility assumptions were chosen to be consistent with those used in the prior study, which were developed based on a review of credibility assumptions being utilized in the employer market.

Expected Claims PMPY = Simulated Claims PMPY x Credibility % + Manual Rate PMPY x (1 – Credibility %)

Group Size	Credibility %
5	10.0%
10	17.0%
25	33.0%
50	55.0%
75	75.0%
100	90.0%

For the final step of our analysis, the dollar amounts associated with Section 4(A) of H-2009-02 (Revised) were then modified such that they would produce substantially similar results to those in Table 1 when applied to the CY 2020 CPD. We note that, for this calculation, each of the underlying benefit plans (i.e., Bronze, Silver, Gold, and Platinum) were also updated such that they would have similar actuarial values based on estimated CY 2020 costs as in CY 2017 (i.e., 0.60, 0.70, 0.80, and 0.90). The dollar amounts which were solved for in this final step are those which we outlined earlier in the Recommendation section of this letter (i.e., $33,200). Table 2 below provides a summary of the percent of claims expected to be ceded by the employer based on these modified parameters at estimated CY 2020 cost levels.

Table 2 – Modified Parameters at CY 2020 Cost Levels
% of Claims Expected to be Ceded with Minimum Stop Loss Coverage

	Group Size					
Metal Level	**5**	**10**	**25**	**50**	**75**	**100**
Bronze	60.8%	62.1%	57.0%	53.6%	52.0%	51.0%
Silver	58.4%	57.4%	52.2%	49.0%	47.6%	46.7%
Gold	55.0%	52.4%	47.5%	44.7%	43.5%	42.7%
Platinum	50.9%	47.6%	43.2%	40.6%	39.6%	39.0%

Table 3 below provides a summary of the differences between the results shown in Table 1 (Current Parameters at CY 2017 Cost Levels) and Table 2 (Modified Parameters at CY 2020 Cost Levels) for each plan design and group size scenario.

Table 3 – 2020 Modified vs. 2017 Current
Difference in % of Claims Expected to be Ceded (Modified – Current)

	Group Size					
Metal Level	**5**	**10**	**25**	**50**	**75**	**100**
Bronze	0.0%	-0.2%	-0.2%	-0.2%	-0.1%	-0.1%
Silver	0.1%	0.2%	0.2%	0.2%	0.2%	0.2%
Gold	0.4%	0.5%	0.4%	0.4%	0.4%	0.4%
Platinum	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%

Note: The values shown in Table 3 may not equal the values shown in Table 2 less the values shown in Table 1 due to rounding

As can be seen, the percent of claims expected to be ceded by the employer when using the modified parameters at estimated CY 2020 cost levels are substantially similar to those calculated when using the original parameters at estimated CY 2017 cost levels.

Anticipated Impact of Proposed Changes to Small Employers

Using the CPD which was calibrated to the estimated CY 2020 cost levels, Monte Carlo simulation was utilized again to analyze the impact the change in minimum attachment point parameters would be expected to have for a range of different group sizes (i.e. 5, 10, 25, 50, 75, and 100), assuming the groups had a medical plan with benefits equal to that of a Platinum metal plan, Gold metal plan, Silver metal plan, or Bronze metal plan, with an ISL deductible equal to $33,200. One hundred thousand (100,000) groups and simulated incurred claim results were developed for each set of group sizes and for each metal level. Based on these results, the minimum aggregate attachment point was calculated for each group under (1) the current Regulation H-2009-02 (Revised) and (2) the recommended 2020 minimum attachment points. Next, groups were categorized based on the level of their CY 2020 calculated aggregate attachment point relative to their expected claims (i.e., as a percentage of expected claims). Table 4 at the end of this letter provides a summary of the results from this phase of the analysis. Then, for the next step of our analysis, the estimated magnitude and percentage of claims which would be expected to be ceded for each group under the proposed minimum stop loss attachment points were calculated. Table 5 at the end of this letter provides a summary of these results.

Below we provide a summary of key findings from our analysis:

1. **ASL Attachment Point Levels –** The proposed change to the minimum ASL attachment point is expected to be impactful only to the smallest small employers (e.g., less than 10 employees). For most small employers, based on the language currently included in Regulation H-2009 (Revised), their minimum ASL attachment point is equal to 120% of expected claims. This would be expected to remain true if the dollar threshold for the minimum ASL attachment point were to be updated to the proposed level of $33,200 and can be observed in the summaries of our analysis. As shown in Table 4, for most group sizes at projected 2020 cost levels, their average minimum ASL attachment point would be expected to be the same under both the current and proposed minimum attachment points.

2. ***ISL vs. ASL Percentage of Incurred Claims Ceded*** – At the proposed minimum attachment points, the large majority of incurred claims expected to be ceded to the insurer under stop loss contracts are ceded as a result of an employer's ISL coverage rather than their ASL coverage. For example, as shown in Table 5, for 5 employee groups enrolled in a Bronze plan, depending on the level of expected claims PMPY, the average expected percentage of incurred claims ceded under ISL coverage ranges from 39.4% to 54.4%. However, the average expected percentage of claims ceded under ASL coverage, if the ASL attachment point were set based on the proposed minimum attachment point parameters, ranged from only 7.1% to 17.5%. For 100 employee groups enrolled in a Silver plan, the difference is even greater, with the average expected percentage of claims ceded under ISL coverage being 45.5% and the average percentage of claims ceded under ASL coverage being 1.2%.

3. ***Retained Risk Levels Under Stop Loss Coverage*** – In Table 5, the average percentage of incurred claims expected to be retained by employers (i.e., retained risk) under the scenarios modeled is calculated by adding the percentage of claims expected to be ceded under ISL coverage to the percentage of claims expected to be ceded under the chosen ASL scenario and then subtracting that total from a value of 1.0. The last two columns of the summaries provided in Table 5 summarize the estimated retained risk at 2020 cost levels under the proposed 2020 minimum attachment points and current minimum attachment points, respectively. As can be seen, the amount of retained risk when utilizing the proposed 2020 minimum attachment points is higher than when using those in the current regulation. In general, the results provided demonstrate that a large percentage of risk would be expected to be retained by employers at the proposed minimum attachment points, ranging from an average of 39.2% for a 5 employee group with a Bronze plan to 51.0% for a 50 employee group with a Silver plan, and up to 61.0% for a 100 employee group with a Platinum plan.

Lasering

Within the stop loss market, a practice known as "lasering" is sometimes used by insurers in which higher attachment points are set for specific members within a group who the insurer determines have a greater likelihood (than others) of incurring high-cost claims in the upcoming plan year. Currently, Vermont does not cap the level at which an attachment point can be set by carriers for individuals who are lasered. In requesting data from Vermont stop loss carriers for use with this study, to help understand how this practice was being employed in Vermont specifically, two data items which were requested included the "number of lasered covered lives"[6] and, in the case where there were lasered members, the "specific/individual stop loss attachment point(s)" for those members.

[6] Within the data request, lasered members were specifically defined for carriers as those individuals for which their specific/individual attachment points are set at a higher level due to their likelihood of incurring high-cost claims in the upcoming year.

Within the carrier information that was ultimately provided, no lasered members were identified in any of the groups, indicating that lasering may not be a practice which is commonly utilized in Vermont's current small employer stop loss market. However, while lasering may not be a practice that is often utilized currently, that does not mean it will not be more commonly employed in the future as Vermont's small employer stop loss market continues to evolve. When lasering does get utilized by carriers, employers of the lasered employees are exposed to greater claims risk (i.e., relative to if lasering were not utilized), generally in exchange for lower stop loss premium rates. Depending on the level of the lasered employee's attachment point, the increased claims risk to the employer can be significant. Connecticut is one state that has recently elected to limit the extent that lasering can be used in its stop loss market by capping the level at which an attachment point can be set by carriers for specific individuals; in Connecticut, the attachment point for any one individual can be no greater than three times the attachment point chosen for the policy on which that individual is covered.[7]

Additional Analysis Related to Employers with 25 or Fewer Employees

In addition to determining the actuarially appropriate adjustments to make to the minimum stop loss attachment points such that they reflect the impact of inflation and medical trend that has occurred since Vermont Regulation H-2009-02 was last revised, the Vermont Department of Financial Regulation (DFR) also requested that Oliver Wyman perform modeling to better understand how the minimum attachment points could be modified for groups with 25 or fewer employees such that, on average, those groups would be expected to retain at least 40.0% of their projected claim costs.[8]

To complete the additional analysis that was requested, a number of modifications to the recommended attachment points described earlier were considered, including (a) increasing the minimum ASL attachment point as a percentage of expected claims to a total greater than 120%, (b) increasing the minimum ASL attachment point through the introduction of a minimum dollar threshold based on the number of employees, and (c) increasing both the ISL attachment point as well as the per group ASL attachment point to a figure greater than $33,200. In reviewing the impact of these modifications, the following items were assessed:

- Whether the average percent of claims projected to be retained by groups with 5, 10, and 25 employees was greater than 40.0% at all metal levels,
- The projected impact to the minimum required ISL and ASL attachment points by metal level and group size, and
- How the "premium equivalent"[9] for level-funded plans would be estimated to change for groups with 25 or fewer employees

[7] https://portal.ct.gov/-/media/CID/1_Bulletins/Bulletin-HC-126.pdf?la=en
[8] Under the recommended attachment points described earlier, the average percent of claims that would be expected to be retained for 5, 10, and 25 employee groups with a corresponding Bronze medical plan is 39.2%, 37.9%, and 43.0%, respectively.
[9] The maximum amount a group will pay for the upcoming plan year under a level-funded plan

Through the additional analysis that was performed, it was determined that one modification that would be expected to meet the DFR's objectives would be to increase both the minimum ISL attachment point and the minimum per group ASL attachment point to $40,000; below is a summary of how the minimum attachment point parameters would be modified for Small Employers with 25 or fewer employees under this scenario:

a) *Small Employers with 25 or fewer employees must:*
   i. *Have an annual attachment point for claims incurred per individual which is at least* ***$40,000;***
   ii. *Have an annual aggregate attachment point that is at least the greater of:*
      i. *120 percent of expected claims; or*
      ii. ***$40,000***

Table 6 at the end of this letter summarizes the average percent of claims that would be expected to be ceded under both the ISL and ASL attachment points, as well as the retained risk for each metal level (i.e., Bronze, Silver, Gold, and Platinum) and group size (i.e., 5, 10, 25 employees) if the minimum stop loss attachment points were to be revised as described above for groups with 25 or fewer employees.

Limitations

- The CPDs utilized in this analysis were developed based on nationwide claim costs for the comprehensive major medical group market and were calibrated to reflect estimated Vermont cost levels for CYs 2017 and 2020. In developing these calibration adjustments, I relied on information provided in publicly available rate filings as well as other external sources. If this information is inaccurate or has been interpreted incorrectly, the underlying findings and conclusions may need to be revised.

- The underlying CPDs used for this analysis were calibrated to represent the group market average allowed PMPY for Vermont. Due to a number of variables, the actual results experienced by any one particular employer are likely to differ.

- In determining how the underlying parameters should be modified due to the impact of medical inflation and trend, it was assumed that the original parameters were set to be reasonable as of plan year 2017.

- It was assumed that any changes made to the parameters would become effective within calendar year 2020. If this assumption is incorrect, the results may need to be revised.

- Since the recommended changes are based on estimates of future events, the actual results may vary.

- This letter is not intended for use in pricing Stop Loss insurance.

Statement of Actuarial Opinion

In performing this analysis, I have utilized generally accepted actuarial methodologies. I am a member of the American Academy of Actuaries and meet that body's Qualification Standards to perform the actuarial analyses contained in this letter.

If you have any questions regarding this filing, please feel free to contact me. I can be reached at 414 277 4608.

Sincerely,

Ryan Schultz, FSA, MAAA
Principal

Copy: Gavin Boyles, VT DFR
Anna Van Fleet, VT DFR
Emily Brown, VT DFR
Taylor Gehrke, Oliver Wyman
Tammy Tomczyk, Oliver Wyman

Table 4 – Comparison of Current and Proposed Minimum ASL Attachment Points

Table 4 – Group Size 5 - Bronze				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	6,543	32,715	81,062	$2,758	$2,807
130%-139%	4,943	24,715	56,417	2,601	2,909
140%-149%	6,002	30,010	65,452	2,632	3,044
150%-159%	6,963	34,815	73,122	2,733	3,161
160%-169%	7,301	36,505	73,607	2,847	3,293
170%-179%	7,366	36,830	71,413	2,960	3,424
180%-189%	6,990	34,950	64,993	3,087	3,571
190%-199%	6,616	33,080	59,267	3,204	3,706
200%+	47,276	236,380	354,145	3,831	4,432
Total	**100,000**	**500,000**	**899,478**	**$3,236**	**$3,702**

Table 4 – Group Size 5 - Silver				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	25,414	127,070	287,825	$3,180	$3,214
130%-139%	9,429	47,145	93,858	2,988	3,335
140%-149%	9,110	45,550	86,310	3,029	3,504
150%-159%	8,601	43,005	77,511	3,185	3,684
160%-169%	7,542	37,710	65,006	3,330	3,852
170%-179%	6,644	33,220	55,138	3,458	4,001
180%-189%	5,631	28,155	45,012	3,590	4,153
190%-199%	4,730	23,650	36,456	3,724	4,308
200%+	22,899	114,495	152,362	4,313	4,990
Total	**100,000**	**500,000**	**899,478**	**$3,408**	**$3,781**

Table 4 – Group Size 5 - Gold				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	51,086	255,430	533,919	$3,712	$3,733
130%-139%	9,386	46,930	80,871	3,456	3,853
140%-149%	8,129	40,645	66,824	3,491	4,039
150%-159%	6,410	32,050	50,325	3,656	4,229
160%-169%	5,425	27,125	40,630	3,832	4,433
170%-179%	4,041	20,205	29,050	3,992	4,618
180%-189%	3,307	16,535	22,953	4,135	4,783
190%-199%	2,581	12,905	17,299	4,282	4,953
200%+	9,635	48,175	57,607	4,800	5,553
Total	**100,000**	**500,000**	**899,478**	**$3,775**	**$4,021**

Table 4 – Group Size 5 - Platinum				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	72,270	361,350	711,551	$4,324	$4,337
130%-139%	6,889	34,445	52,207	3,928	4,381
140%-149%	5,205	26,025	37,540	3,979	4,603
150%-159%	3,865	19,325	26,690	4,156	4,808
160%-169%	2,946	14,730	19,498	4,336	5,016
170%-179%	2,172	10,860	13,796	4,518	5,227
180%-189%	1,614	8,070	9,902	4,678	5,412
190%-199%	1,241	6,205	7,399	4,814	5,568
200%+	3,798	18,990	20,895	5,217	6,035
Total	**100,000**	**500,000**	**899,478**	**$4,314**	**$4,454**

Table 4 – Group Size 10 - Bronze				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	87,439	874,390	1,621,844	$2,401	$2,405
130%-139%	4,706	47,060	71,291	1,969	2,192
140%-149%	2,983	29,830	43,440	1,971	2,280
150%-159%	1,838	18,380	25,837	2,042	2,362
160%-169%	1,217	12,170	16,559	2,109	2,440
170%-179%	676	6,760	8,916	2,176	2,517
180%-189%	453	4,530	5,712	2,276	2,633
190%-199%	269	2,690	3,302	2,338	2,705
200%+	419	4,190	4,837	2,486	2,876
Total	**100,000**	**1,000,000**	**1,801,738**	**$2,364**	**$2,396**

Table 4 – Group Size 10 - Silver				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	97,663	976,630	1,771,976	$2,935	$2,936
130%-139%	1,068	10,680	14,292	2,231	2,481
140%-149%	599	5,990	7,535	2,282	2,639
150%-159%	331	3,310	4,027	2,359	2,729
160%-169%	138	1,380	1,661	2,384	2,758
170%-179%	96	960	1,088	2,532	2,929
180%-189%	47	470	516	2,614	3,024
190%-199%	28	280	314	2,559	2,961
200%+	30	300	329	2,617	3,027
Total	**100,000**	**1,000,000**	**1,801,738**	**$2,925**	**$2,931**

Table 4 – Group Size 10 - Gold				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	99,682	996,820	1,798,097	$3,555	$3,555
130%-139%	162	1,620	1,906	2,540	2,822
140%-149%	81	810	913	2,546	2,945
150%-159%	44	440	482	2,620	3,031
160%-169%	15	150	169	2,547	2,947
170%-179%	10	100	106	2,708	3,132
180%-189%	3	30	33	2,609	3,018
190%-199%	1	10	11	2,609	3,018
200%+	2	20	21	2,733	3,162
Total	**100,000**	**1,000,000**	**1,801,738**	**$3,553**	**$3,554**

Table 4 – Group Size 10 - Platinum				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	99,964	999,640	1,801,343	$4,236	$4,236
130%-139%	24	240	267	2,668	2,984
140%-149%	6	60	63	2,733	3,162
150%-159%	4	40	44	2,609	3,018
160%-169%	1	10	11	2,609	3,018
170%-179%	1	10	10	2,870	3,320
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**1,000,000**	**1,801,738**	**$4,235**	**$4,235**

Table 4 – Group Size 25 - Bronze				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	2,500,000	4,508,776	$2,412	$2,412
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**2,500,000**	**4,508,776**	**$2,412**	**$2,412**

Table 4 – Group Size 25 - Silver				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	2,500,000	4,508,776	$2,995	$2,995
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**2,500,000**	**4,508,776**	**$2,995**	**$2,995**

Table 4 – Group Size 25 - Gold				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	2,500,000	4,508,776	$3,634	$3,634
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**2,500,000**	**4,508,776**	**$3,634**	**$3,634**

Table 4 – Group Size 25 - Platinum				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	2,500,000	4,508,776	$4,326	$4,326
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**2,500,000**	**4,508,776**	**$4,326**	**$4,326**

Table 4 – Group Size 50 - Bronze				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	5,000,000	9,016,297	$2,501	$2,501
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**5,000,000**	**9,016,297**	**$2,501**	**$2,501**

Table 4 – Group Size 50 - Silver				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	5,000,000	9,016,297	$3,095	$3,095
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**5,000,000**	**9,016,297**	**$3,095**	**$3,095**

Table 4 – Group Size 50 - Gold				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	5,000,000	9,016,297	$3,747	$3,747
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**5,000,000**	**9,016,297**	**$3,747**	**$3,747**

Table 4 – Group Size 50 - Platinum				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	5,000,000	9,016,297	$4,452	$4,452
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**5,000,000**	**9,016,297**	**$4,452**	**$4,452**

Table 4 – Group Size 75 – Bronze				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	7,500,000	13,524,042	$2,582	$2,582
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**7,500,000**	**13,524,042**	**$2,582**	**$2,582**

Table 4 – Group Size 75 - Silver				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	7,500,000	13,524,042	$3,187	$3,187
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**7,500,000**	**13,524,042**	**$3,187**	**$3,187**

Table 4 – Group Size 75 - Gold				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	7,500,000	13,524,042	$3,850	$3,850
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**7,500,000**	**13,524,042**	**$3,850**	**$3,850**

Table 4 – Group Size 75 - Platinum				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	7,500,000	13,524,042	$4,567	$4,567
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**7,500,000**	**13,524,042**	**$4,567**	**$4,567**

Table 4 – Group Size 100 - Bronze				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	10,000,000	18,031,452	$2,640	$2,640
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**10,000,000**	**18,031,452**	**$2,640**	**$2,640**

Table 4 – Group Size 100 - Silver				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	10,000,000	18,031,452	$3,253	$3,253
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**10,000,000**	**18,031,452**	**$3,253**	**$3,253**

Table 4 – Group Size 100 - Gold				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	10,000,000	18,031,452	$3,925	$3,925
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**10,000,000**	**18,031,452**	**$3,925**	**$3,925**

Table 4 – Group Size 100 - Platinum				ASL Attachment Point PMPY	
ASL as a % of Expected Claims	Groups	Employees	Members	Current Regulation	Proposed
120%-129%	100,000	10,000,000	18,031,452	$4,650	$4,650
130%-139%	0	0	0	0	0
140%-149%	0	0	0	0	0
150%-159%	0	0	0	0	0
160%-169%	0	0	0	0	0
170%-179%	0	0	0	0	0
180%-189%	0	0	0	0	0
190%-199%	0	0	0	0	0
200%+	0	0	0	0	0
Total	**100,000**	**10,000,000**	**18,031,452**	**$4,650**	**$4,650**

Table 5 – Expected Claims Ceded Under Proposed Minimum Stop Loss Attachment Points

Table 5 – Group Size 5 - Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	6,543	54.4%	17.5%	28.1%	25.0%
130%-139%	4,943	53.3%	14.5%	32.2%	29.2%
140%-149%	6,002	51.2%	13.5%	35.3%	32.2%
150%-159%	6,963	52.0%	11.7%	36.3%	33.2%
160%-169%	7,301	49.9%	10.7%	39.4%	36.3%
170%-179%	7,366	47.6%	9.9%	42.5%	39.3%
180%-189%	6,990	45.9%	9.4%	44.7%	41.4%
190%-199%	6,616	45.8%	9.1%	45.1%	41.9%
200%+	47,276	39.4%	7.1%	53.5%	50.5%
Total	**100,000**	**48.9%**	**11.9%**	**39.2%**	**36.1%**

Table 5 – Group Size 5 - Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	25,414	49.1%	15.7%	35.2%	31.9%
130%-139%	9,429	46.0%	13.3%	40.7%	37.2%
140%-149%	9,110	43.9%	12.1%	44.0%	40.5%
150%-159%	8,601	41.4%	11.6%	46.9%	43.4%
160%-169%	7,542	42.2%	10.8%	47.0%	43.7%
170%-179%	6,644	39.0%	10.0%	50.9%	47.5%
180%-189%	5,631	36.8%	9.6%	53.7%	50.2%
190%-199%	4,730	37.1%	9.3%	53.6%	50.2%
200%+	22,899	32.5%	7.6%	59.8%	56.8%
Total	**100,000**	**45.0%**	**13.3%**	**41.6%**	**38.3%**

Table 5 – Group Size 5 – Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	51,086	43.9%	14.3%	41.8%	38.4%
130%-139%	9,386	37.4%	13.6%	49.0%	45.3%
140%-149%	8,129	36.4%	12.4%	51.3%	47.6%
150%-159%	6,410	34.5%	11.5%	54.1%	50.4%
160%-169%	5,425	33.5%	10.8%	55.6%	52.1%
170%-179%	4,041	34.2%	9.9%	55.8%	52.5%
180%-189%	3,307	31.7%	9.8%	58.5%	55.0%
190%-199%	2,581	28.3%	9.9%	61.9%	58.4%
200%+	9,635	26.2%	7.6%	66.2%	63.0%
Total	**100,000**	**41.3%**	**13.6%**	**45.0%**	**41.6%**

Table 5 – Group Size 5 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	72,270	39.2%	13.1%	47.7%	43.8%
130%-139%	6,889	30.9%	13.2%	55.9%	52.0%
140%-149%	5,205	31.7%	12.3%	56.0%	52.3%
150%-159%	3,865	30.0%	11.7%	58.3%	54.6%
160%-169%	2,946	26.3%	11.5%	62.2%	58.5%
170%-179%	2,172	31.0%	10.2%	58.8%	55.3%
180%-189%	1,614	23.3%	10.3%	66.4%	62.8%
190%-199%	1,241	23.9%	8.3%	67.8%	64.3%
200%+	3,798	18.5%	7.5%	74.0%	70.8%
Total	**100,000**	**37.9%**	**12.9%**	**49.1%**	**45.3%**

Table 5 – Group Size 10 – Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	87,439	49.6%	13.1%	37.3%	33.8%
130%-139%	4,706	34.5%	7.5%	58.0%	54.8%
140%-149%	2,983	25.9%	6.8%	67.3%	64.2%
150%-159%	1,838	33.0%	4.7%	62.3%	60.0%
160%-169%	1,217	22.7%	3.4%	73.8%	71.9%
170%-179%	676	17.6%	3.5%	78.8%	76.9%
180%-189%	453	20.0%	2.7%	77.3%	75.7%
190%-199%	269	0.2%	1.4%	98.4%	97.2%
200%+	419	0.0%	1.6%	98.4%	97.8%
Total	**100,000**	**49.1%**	**13.0%**	**37.9%**	**34.4%**

Table 5 – Group Size 10 - Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	97,663	45.3%	12.1%	42.6%	39.1%
130%-139%	1,068	29.6%	5.4%	65.0%	62.3%
140%-149%	599	25.2%	5.4%	69.4%	66.6%
150%-159%	331	14.9%	2.7%	82.4%	80.8%
160%-169%	138	0.1%	2.0%	97.8%	95.5%
170%-179%	96	1.8%	2.6%	95.6%	94.1%
180%-189%	47	0.0%	0.0%	100.0%	100.0%
190%-199%	28	0.0%	0.0%	100.0%	100.0%
200%+	30	0.0%	0.0%	100.0%	100.0%
Total	**100,000**	**45.3%**	**12.1%**	**42.6%**	**39.2%**

Table 5 – Group Size 10 - Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	99,682	41.6%	10.8%	47.6%	44.2%
130%-139%	162	6.0%	4.3%	89.7%	87.0%
140%-149%	81	1.6%	2.3%	96.1%	94.3%
150%-159%	44	1.7%	3.1%	95.1%	93.8%
160%-169%	15	0.0%	0.0%	100.0%	96.7%
170%-179%	10	0.0%	0.0%	100.0%	100.0%
180%-189%	3	0.0%	3.6%	96.4%	85.6%
190%-199%	1	0.0%	0.0%	100.0%	100.0%
200%+	2	0.0%	0.0%	100.0%	100.0%
Total	**100,000**	**41.6%**	**10.8%**	**47.6%**	**44.2%**

Table 5 – Group Size 10 - Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	99,964	38.2%	9.4%	52.4%	48.4%
130%-139%	24	2.4%	8.4%	89.2%	86.0%
140%-149%	6	0.0%	0.0%	100.0%	100.0%
150%-159%	4	0.0%	11.9%	88.1%	80.5%
160%-169%	1	0.0%	0.0%	100.0%	100.0%
170%-179%	1	0.0%	0.0%	100.0%	100.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**38.2%**	**9.4%**	**52.4%**	**48.4%**

Table 5 – Group Size 25 – Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	49.4%	7.6%	43.0%	39.3%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**49.4%**	**7.6%**	**43.0%**	**39.3%**

Table 5 – Group Size 25 - Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	45.5%	6.7%	47.8%	44.3%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**45.5%**	**6.7%**	**47.8%**	**44.3%**

Table 5 – Group Size 25 - Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	41.8%	5.7%	52.5%	49.0%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**41.8%**	**5.7%**	**52.5%**	**49.0%**

Table 5 – Group Size 25 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	38.4%	4.8%	56.8%	52.8%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**38.4%**	**4.8%**	**56.8%**	**52.8%**

Table 5 – Group Size 50 - Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	49.3%	4.3%	46.4%	42.9%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**49.3%**	**4.3%**	**46.4%**	**42.9%**

Table 5 – Group Size 50 - Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	45.4%	3.5%	51.0%	47.7%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**45.4%**	**3.5%**	**51.0%**	**47.7%**

Table 5 – Group Size 50 - Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	41.8%	2.9%	55.3%	52.2%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**41.8%**	**2.9%**	**55.3%**	**52.2%**

Table 5 – Group Size 50 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	38.4%	2.3%	59.4%	55.8%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**38.4%**	**2.3%**	**59.4%**	**55.8%**

Table 5 – Group Size 75 – Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	49.4%	2.6%	48.0%	44.8%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**49.4%**	**2.6%**	**48.0%**	**44.8%**

Table 5 – Group Size 75 - Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	45.6%	2.0%	52.4%	49.4%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**45.6%**	**2.0%**	**52.4%**	**49.4%**

Table 5 – Group Size 75 - Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	41.9%	1.6%	56.5%	53.8%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**41.9%**	**1.6%**	**56.5%**	**53.8%**

Table 5 – Group Size 75 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	38.5%	1.1%	60.4%	57.4%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**38.5%**	**1.1%**	**60.4%**	**57.4%**

Table 5 – Group Size 100 - Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	49.4%	1.6%	49.0%	46.1%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**49.4%**	**1.6%**	**49.0%**	**46.1%**

Table 5 – Group Size 100 - Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	45.5%	1.2%	53.3%	50.7%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**45.5%**	**1.2%**	**53.3%**	**50.7%**

Table 5 – Group Size 100 - Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	41.8%	0.9%	57.3%	55.0%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**41.8%**	**0.9%**	**57.3%**	**55.0%**

Table 5 – Group Size 100 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)	2020 Retained Risk % (Current Regulation)
120%-129%	100,000	38.4%	0.6%	61.0%	58.5%
130%-139%	0	0.0%	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%	0.0%
Total	**100,000**	**38.4%**	**0.6%**	**61.0%**	**58.5%**

Table 6 – Expected Claims Ceded Under $40,000 ISL and Per Group ASL Attachment Points

Table 6 – Group Size 5 – Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	2,596	51.4%	20.2%	28.4%
130%-139%	2,684	51.4%	16.6%	32.1%
140%-149%	3,888	49.9%	14.8%	35.3%
150%-159%	4,914	46.5%	14.3%	39.2%
160%-169%	5,813	47.9%	12.1%	39.9%
170%-179%	6,422	47.1%	11.1%	41.8%
180%-189%	6,595	43.9%	10.3%	45.8%
190%-199%	6,559	42.9%	9.0%	48.1%
200%+	60,529	36.1%	7.1%	56.8%
Total	**100,000**	**44.4%**	**11.8%**	**43.8%**

Table 6 – Group Size 10 – Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	77,598	45.6%	14.7%	39.7%
130%-139%	7,296	30.8%	8.5%	60.7%
140%-149%	5,131	28.0%	6.9%	65.1%
150%-159%	3,456	22.9%	6.4%	70.7%
160%-169%	2,265	22.5%	4.7%	72.8%
170%-179%	1,514	15.9%	3.4%	80.7%
180%-189%	995	13.0%	2.5%	84.5%
190%-199%	610	20.5%	3.5%	76.1%
200%+	1,135	0.0%	0.3%	99.7%
Total	**100,000**	**44.6%**	**14.2%**	**41.1%**

Table 6 – Group Size 25 – Bronze

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	100,000	44.9%	8.7%	46.4%
130%-139%	0	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%
Total	**100,000**	**44.9%**	**8.7%**	**46.4%**

Table 6 – Group Size 5 – Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	13,782	46.2%	17.7%	36.1%
130%-139%	7,428	43.6%	15.3%	41.2%
140%-149%	8,258	42.7%	13.4%	43.9%
150%-159%	8,360	41.6%	12.1%	46.3%
160%-169%	7,929	37.7%	10.9%	51.4%
170%-179%	7,580	36.6%	11.2%	52.2%
180%-189%	6,643	36.5%	9.7%	53.8%
190%-199%	5,937	32.6%	9.5%	57.9%
200%+	34,083	29.1%	7.4%	63.5%
Total	**100,000**	**40.7%**	**13.5%**	**45.9%**

Table 6 – Group Size 10 – Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	94,334	41.1%	13.6%	45.3%
130%-139%	2,400	20.4%	7.3%	72.3%
140%-149%	1,415	20.9%	5.2%	73.9%
150%-159%	772	16.8%	3.7%	79.5%
160%-169%	479	17.6%	4.3%	78.0%
170%-179%	270	0.0%	0.1%	99.9%
180%-189%	128	0.0%	2.8%	97.2%
190%-199%	88	0.0%	1.5%	98.5%
200%+	114	0.0%	0.0%	100.0%
Total	**100,000**	**40.9%**	**13.5%**	**45.6%**

Table 6 – Group Size 25 – Silver

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	100,000	41.2%	7.6%	51.2%
130%-139%	0	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%
Total	**100,000**	**41.2%**	**7.6%**	**51.2%**

Table 6 – Group Size 5 – Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	34,946	41.0%	16.0%	43.0%
130%-139%	9,978	36.6%	13.7%	49.7%
140%-149%	9,194	33.6%	12.9%	53.5%
150%-159%	7,952	34.1%	12.0%	53.9%
160%-169%	6,972	30.0%	11.0%	59.0%
170%-179%	5,678	30.4%	10.3%	59.3%
180%-189%	4,886	27.6%	9.8%	62.6%
190%-199%	3,830	30.6%	9.0%	60.3%
200%+	16,564	22.6%	7.4%	70.0%
Total	**100,000**	**37.2%**	**14.1%**	**48.7%**

Table 6 – Group Size 10 – Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	98,911	37.5%	12.2%	50.3%
130%-139%	554	16.2%	6.1%	77.7%
140%-149%	271	20.2%	2.9%	76.9%
150%-159%	122	0.0%	1.5%	98.5%
160%-169%	73	0.1%	3.5%	96.4%
170%-179%	38	0.0%	0.0%	100.0%
180%-189%	12	0.0%	0.0%	100.0%
190%-199%	12	0.0%	0.0%	100.0%
200%+	7	0.0%	0.0%	100.0%
Total	**100,000**	**37.5%**	**12.2%**	**50.4%**

Table 6 – Group Size 25 – Gold

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	100,000	37.7%	6.5%	55.7%
130%-139%	0	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%
Total	**100,000**	**37.7%**	**6.5%**	**55.7%**

Table 6 – Group Size 5 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	57,419	36.3%	14.5%	49.2%
130%-139%	9,009	29.9%	13.8%	56.3%
140%-149%	7,266	26.3%	12.5%	61.2%
150%-159%	5,924	27.0%	11.3%	61.7%
160%-169%	4,509	27.8%	10.7%	61.5%
170%-179%	3,522	23.7%	10.0%	66.3%
180%-189%	2,770	23.6%	9.6%	66.9%
190%-199%	2,096	25.5%	9.4%	65.1%
200%+	7,485	16.7%	7.1%	76.3%
Total	**100,000**	**34.0%**	**13.8%**	**52.1%**

Table 6 – Group Size 10 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	99,827	34.3%	10.7%	55.0%
130%-139%	100	0.2%	3.6%	96.2%
140%-149%	42	0.1%	2.9%	97.0%
150%-159%	19	0.0%	0.9%	99.1%
160%-169%	6	0.0%	0.0%	100.0%
170%-179%	3	0.0%	1.1%	98.9%
180%-189%	2	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%
200%+	1	0.0%	0.0%	0.0%
Total	**100,000**	**34.3%**	**10.7%**	**55.0%**

Table 6 – Group Size 25 – Platinum

ASL as a % of Expected Claims	Groups	2020 ISL Ceded %	2020 ASL Ceded %	2020 Retained Risk % (Proposed)
120%-129%	100,000	34.5%	5.5%	59.9%
130%-139%	0	0.0%	0.0%	0.0%
140%-149%	0	0.0%	0.0%	0.0%
150%-159%	0	0.0%	0.0%	0.0%
160%-169%	0	0.0%	0.0%	0.0%
170%-179%	0	0.0%	0.0%	0.0%
180%-189%	0	0.0%	0.0%	0.0%
190%-199%	0	0.0%	0.0%	0.0%
200%+	0	0.0%	0.0%	0.0%
Total	**100,000**	**34.5%**	**5.5%**	**59.9%**

OliverWyman

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Anna Van Fleet
Assistant Director of Rates and Forms, Life and Health
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620

September 2, 2021

BCBSVT Proposal Response

Dear Anna Van Fleet:

During a conversation between the Vermont Department of Financial Regulation (DFR) and Oliver Wyman on 7/1/2021, DFR requested that Oliver Wyman provide additional context regarding the extent to which adopting the minimum attachment point proposal submitted by BCSBVT on 3/1/2021 would actually increase the amount of risk ceded to the stop-loss insurer, particularly for small groups with relatively low average claim costs. Our response is summarized below:

The attachment point proposal submitted by BCBSVT on 3/1/2021 was that small employers with 25 or fewer employees must:

- Have an annual attachment point for claims incurred per individual which is at least $40,000;
- Have an annual aggregate attachment point that is at least the greater of:
    - 120% of expected claims; or
    - $40,000, not to exceed 150% of expected claims

Oliver Wyman modeled BCBSVT's proposal and identified two results that appeared to be counter to the goals of DFR.

First, for groups with five employees, it was estimated that more claims would be ceded to the stop-loss insurer (i.e., groups would retain less risk) under BCBSVT's proposal relative to DFR's proposal.[1] Further, the average percent of claims expected to be ceded for those groups with underlying benefit plans equivalent to a plan at a bronze metal level in the ACA market was greater than 60.0%. The table below summarizes the estimated average percent of claims ceded under DFR's proposal and BCBSVT's proposal, for employers with five employees and underlying benefit plans equivalent to those at the bronze, silver, gold, and platinum metal levels.

[1] The DFR proposal being referenced required a minimum individual stop loss attachment point of $40,000 and a minimum aggregate stop loss attachment point equal to the greater of $40,000 or 120% of the group's expected claims.

5 Employee Groups - Estimated Ceded Claims as a Percent of Total Claims

Metal Level	DFR Proposal	BCBSVT Proposal
Bronze	56.2%	62.0%
Silver	54.1%	56.8%
Gold	51.3%	52.5%
Platinum	47.9%	48.3%

Second, we estimated that some groups could actually have a lower annual aggregate attachment point under BCBSVT's proposal than is required by the current Vermont Regulation H-2009-02 (Revised).[2] As an example, we estimated that over 50% of simulated five employee groups enrolled in an underlying benefit plan equivalent the bronze metal level in the ACA market would have an annual aggregate attachment point less than or equal to $28,700, which is the minimum annual aggregate attachment point required by Vermont regulation today.

If you have any questions regarding this letter, please feel free to contact me. I can be reached at 414 277 4608.

Sincerely,

Ryan Schultz, FSA, MAAA
Principal

Copy: Sebastian Arduengo, Vermont Department of Financial Regulation
Taylor Gehrke, Oliver Wyman Actuarial Consulting, Inc.
Tammy Tomczyk, Oliver Wyman Actuarial Consulting, Inc.

[2] https://dfr.vermont.gov/sites/finreg/files/regbul/dfr-regulation-health-h-2009-02-revised-health-care-stop-loss-insurance.pdf

Subject: RE: BCBSVT Stop Loss
Date: Monday, March 1, 2021 at 12:38:42 PM Eastern Standard Time
From: Paul Schultz
To: Michael Durkin, Van Fleet, Anna
CC: Brown, Emily, Arduengo, Sebastian, Keller, Phil, Sara Teachout, Rebecca Heintz
Attachments: image001.png

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Good day, **all!**

As requested, I am providing a written summary of the BCBSVT proposal relative to the proposed updates to the aggregate attachment point for small businesses.

DFR has proposed that the aggregate attachment point for groups of 25 employees or fewer should be a minimum of $40,000. Such a change would essentially prevent small groups with excellent claims experience from accessing the self-funded market while allowing otherwise similarly-situated groups with moderate claims experience continued access to the market.

If the $40,000 aggregate attachment minimum were in place for 2021, these are the percent ASLs we would need to offer to meet the new minimum for nine groups we have identified as being significantly impacted by the updated rule:

Deidentified Group	Contracts	Members	ASL with $40,000 min	Metal Levels Offered
Group A	4	4	229%	Gold
Group B	5	5	350%	Gold
Group C	6	6	327%	Gold
Group D	6	9	202%	Gold & Bronze
Group E	7	7	299%	Gold
Group F	7	9	207%	Gold
Group G	8	12	218%	Gold
Group H	8	12	193%	Gold & Bronze
Group I	10	10	195%	Gold

These are not viable product offerings. Rather than offering groups aggregate "insurance" that essentially has no value, we would likely decline to quote these groups, whose only alternative would become the Exchange. This would be a hardship for these small businesses, as the community rate is significantly in excess of rates they can attain through the self-funded market. While there would be a benefit to the Exchange, we estimate that rates would drop by well less than a tenth of a percent if these groups were forced into the single risk pool. It is difficult to argue that the immaterial benefit to the single risk pool is worth the potentially ruinous implications for these small businesses, many of which are already struggling through unprecedented hardships during the pandemic.

Meanwhile, there are many groups of a similar size that would be able to retain the ASL policies they have in place today. For example:

Deidentified Group	Contracts	Members	ASL with $40,000 min	Metal Levels Offered

Group 1	6	12	150%	Gold, Silver & Bronze
Group 2	6	10	150%	Gold
Group 3	6	13	150%	Gold & Bronze
Group 4	6	8	150%	Gold
Group 5	7	11	150%	Silver
Group 6	8	12	140%	Gold
Group 7	10	22	140%	Gold
Group 8	10	25	140%	Gold
Group 9	10	19	140%	Gold

It is not equitable that similarly situated groups can access the self-funded market only if their claims experience is *above* a certain level.

We propose that "lesser of" language would be more appropriate for very small employers. Specifically, we recommend amending Section 4c to read (additional language in **bold**):

> 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, not to exceed 150 percent of expected claims

Our review of the Oliver Wyman work product suggests that DFR's stated objective that "those groups would be expected to retain at least 40.0% of their projected claim costs" would be satisfied by this amendment. This is especially true at the Gold metal level offered currently by all nine of the directly impacted employers.

There are many other combinations of percentage and dollar aggregate attachment points that would also satisfy the Department's goal. For instance, we do not sell 120 percent aggregate policies to any group of under 25 employees (our minimum is 130 percent for groups of that size). We would be open to discussing further alternatives with you as well if it would be helpful.

I would be glad to further discuss our proposal with the Department and/or Oliver Wyman.

Best regards,

// Paul

Paul A. Schultz, F.S.A., M.A.A.A.
Chief Actuary
Blue Cross® and Blue Shield® of Vermont
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From: Michael Durkin <DurkinM@bcbsvt.com>
Sent: Wednesday, February 24, 2021 9:01 AM
To: Van Fleet, Anna <Anna.VanFleet@vermont.gov>
Cc: Brown, Emily <Emily.Brown@vermont.gov>; Arduengo, Sebastian <Sebastian.Arduengo@vermont.gov>; Keller, Phil <Phil.Keller@vermont.gov>; Paul Schultz <schultzp@bcbsvt.com>; Sara Teachout <TeachoutS@bcbsvt.com>; Rebecca Heintz <heintzr@bcbsvt.com>
Subject: BCBSVT Stop Loss

Good Morning Anna,

Thanks for the opportunity to discuss the proposed changes to the Stop Loss rule last week. As a follow-up from our discussion, I am writing to confirm that all groups are currently in compliance with the annual aggregate attachment points within Reg. H-2009-02. The minimum individual attachment that we offer is $30,000 and in every case the aggregate attachment point is at least the greater of $28,700 or 120% of expected claims.

Please let me know if you have any additional questions.

Mike

Michael T. Durkin, Esq.
Assistant General Counsel and Privacy Officer
Blue Cross and Blue Shield of Vermont
P.O. Box 186 • Montpelier, VT 05601-0186
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Subject: Comments on Proposed Stop Loss Changes - H-2009-02 (Revised)
Date: Monday, June 21, 2021 at 2:37:32 PM Eastern Daylight Time
From: Oliver, Christine
To: Arduengo, Sebastian
CC: Brown, Emily, Fleischer, Mitchell, Pieciak, Michael, Paul Schultz, Michael Durkin, Shouldice, Heather
Attachments: BCBS Comments on Stop Loss Rule 2021.pdf

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Hi Sebastian,
I'm writing on behalf of NFP and Business Resource Services (BRS) in support of BCBSVT's comments and solutions regarding proposed changes to H-2009-02 (Revised) - set forth in the email dated March 1, 2021 from Paul Schultz (attached for ease of reference).

In summary, BCBSVT identifies the issues that are of concern to NFP and BRS, and offers a solution the organizations completely support.

It is worth noting that small businesses continue to struggle for survival in this post-pandemic environment. They do not have the capacity to pay more for health insurance than is absolutely necessary – any savings is critical now. Blue Edge Business (BEB) plans (the ones most critically impacted by the proposed rule) are working, as designed, to help small businesses. The best evidence of their success is the fact that 2/3 of BEB groups will receive a refund on their 2020 claims experience this year. Further, the 1/3 of groups that won't receive a refund still enjoyed the benefit of lower premiums than were available to them on the Exchange. None of the BEB business groups are unhappy with their plans. The proposed changes to the rule will have negative impacts where no benefits exist.

Please let me know if you have any questions or require additional information.

Sincerely,
Christine

Christine M. Oliver
Consultant to BRS and
Senior Vice President, NFP

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March 30, 2021

E. Sebastian Arduengo
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
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Re: Health Care Stop Loss Insurance (H-2009-02)

Thank you for the opportunity to provide comments on the proposed amendments to the rule re: Health Care Stop Loss Insurance. Cigna appreciates the Department's commitment to hear from stakeholders on this important issue.

Stop loss is not medical coverage, but an insured product purchased to supplement a self-funded medical plan with added financial protection to preserve the solvency of the employer and underlying medical plan. Employers elect to self-fund their employee health plans to take advantage of benefits unique to the funding option, including greater plan design flexibility, improved cash flow, and potential savings. In exchange for the benefits of self-funding, the employer accepts an increased amount of risk. If claims are higher than expected – due to catastrophic illness, accident or overall adverse utilization shifts – the employer is liable for all claims, including those exceeding the expected amount. As such, employers continue to demonstrate they value the financial protections stop-loss affords and want the choice to protect themselves from catastrophic and ongoing high cost claim events while retaining the benefits self-funding offers.

Cigna supports reasonable regulations on stop loss insurance and we generally support the NAIC stop loss model, which is supported by actuarial data, with an ISL of $20,000 and an aggregate attachment point of 120% of claims. Given that, we ask you to consider maintaining Vermont's existing attachment points ($28,700) as opposed to increasing them.

The proposed amendments to the rule 1) increase minimum annual attachment points for claims incurred per individual; 2) increase the minimum annual aggregate attachment points; and 3) limit higher attachment points for any individual or group of individuals within small employer groups to three times the attachment point chosen for the policy. The amendment increases minimum aggregate attachment points for small employers from $28,700 to $33,200 or $40,000 for employers with 25 or fewer employees.

In Cigna's view, a minimum individual attachment point of $20,000 still represents a significant risk retained by the employer from both a frequency and severity perspective. Additionally, an annual aggregate attachment point for health benefits that is less than 120% of expected claims exists in many other states. Cigna believes these factors continue to represent a fair balance of interests. Requiring a minimum ISL level of $40,000 will limit employers' options and potentially prohibit small groups from moving to a self-funded solution when they'd otherwise benefit from its unique funding features. However, Cigna agrees limiting higher attachment points (lasers) for any individual or group of individuals within small employer groups to three times the attachment point chosen for the policy may help prevent employers from taking on more risk than they can accommodate.

As you know, small group is currently defined in Vermont as less than 100 eligible which is the same threshold used for Fully Insured and the VT exchange. In the proposed rule, can you confirm whether the reference to a small group of 25 employees is based on eligible employees as well? Cigna suggests that employer size regulations based on eligible employees, as opposed to enrolled employees, aligns with many other states' regulations and minimizes the negative impacts on current Cigna stop loss clients. While we appreciate the concern noted by DFR of very small employers self-insuring, Cigna would argue that the proposed lasering limits should help address that concern. Additionally, small employers should be afforded as many appropriate options as possible to achieve affordable solutions for their employees. Risk tolerance varies from client to client and we want to be able to meet everyone's needs.

Once again, thank you for the opportunity to weigh in on the proposed amendments to the rule.

If you have any questions, please do not hesitate to contact me at (804.904.3473) or Christine.Cooney@cigna.com.

Sincerely,

Christine Cooney

Christine Cooney
Cigna, State Government Affairs Manager, New England

VERMONT LEGAL AID, INC.

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Submitted electronically on June 23, 2021

To:

Vermont Department of Financial Regulation
89 Main Street, Montpelier VT 05602 – 301
Attention: E. Sebastian Arduengo (Sebastian.Arduengo@vermont.gov) & Emily Brown (Emily.Brown@vermont.gov)

RE: Comments on Proposed Changes to Health Care Stop-Loss Insurance Rule (H-2009-02)

Thank you for the opportunity to comment on the proposed changes to the Department of Financial Regulation's (DFR) Health Care Stop-Loss Insurance rule (H-2009-02) (Rule Amendment).

DFR plays an important role in realizing Vermont's goal of creating an affordable, accessible, and innovative health care system that empowers Vermonters. One specific way that DFR contributes to this goal is by regulating stop-loss insurance. We are generally supportive of the Rule Amendment and appreciate the time that DFR has taken to look into this important issue. The Rule Amendment is a good first step but further changes are needed to how DRF regulates stop-loss insurance to better align DFR regulations with Vermont's health care policy goals and the post-ARPA reduced premium of ACA-compliant health insurance sold on Vermont Health Connect.

The Office of the Health Care Advocate (HCA) supports several aspects of the Rule Amendment. Namely, we support readjusting attachment points to ensure at least minimal employer risk assumption over time, prohibiting a certain form of lasering, and creating minimum attachment points for groups with twenty-five or fewer employees.

We have, however, concerns that DFR's stop-loss insurance regulation incentivizes employers to self-insure which destabilizes Vermont's small group health insurance market. Specifically, DFR's proposed minimum individual and aggregate stop-loss attachment points (ISL and ASL, respectively) continue to allow self-insuring groups to cede too much risk. This increases the incidence of employers self-insuring which, in turn, undermines Vermont's ongoing health care reform and consumer protection efforts.

DFR's incenting of self-insurance through low stop-loss attachment points, is bad for Vermont, Vermont employers, and Vermont employees because, amongst other reasons, (1) some small groups that self-insure lack the capital reserves to weather the highly variable claims experience attendant to their small size, (2) level-funded self-insurance plans using a captive insurance vehicle in which employers share upside risk skirt state insurance

regulation[1], (3) self-insuring allows employers to provide Vermont employees inferior health insurance coverage, (4) self-insuring encourages adverse selection against the Exchange, and (5) self-insuring openings the door for employment discrimination against employees with expensive health conditions. Lastly, we note that expensive conditions are disproportionately experienced by BIPOC Vermonters, Vermonters with disabilities, and other vulnerable and/or marginalized Vermont populations.

We organize our comments on the Rule Amendment into four sections: (1) concerns that DFR's stop-loss insurance rule, even assuming implementation of the Rule Amendment, undermines Vermont's health care reform efforts, (2) concerns that the Rule Amendment is not based on the collection and analysis of adequate evidence, (3) the positive aspects of the Rule Amendment with some suggested improvements, (4) a brief response to Blue Cross Blue Shield's (BCBSVT) public comment on the Rule Amendment, and (4) the explication of three stop-loss insurance regulations not included in the Rule Amendment that are needed to better protect Vermonters.

Allowing the Sale of Stop-Loss Insurance Undermines Vermont's Health Care Reform Efforts

Vermonters have devoted substantial effort towards realizing the health care reform goals codified in Act 48 which includes providing access to affordable health insurance to all Vermonters. Self-insurance fragments Vermont's health care system and undermines health care reform efforts, because it exists largely outside state health care regulatory schemes. Further, rather than spread risk evenly across all small employers, self-insurance provides a way for healthier groups to leave the shared risk pool which increases premiums and cost volatility for the remaining groups.

We recognize that DFR is limited in its ability to regulate self-insurance.[2] However, by regulating stop-loss insurance, DFR can alter the incentives for employers to self-insure and thus the likelihood of the fragmentation of Vermont's health care system. To protect Vermonters, DFR should make it substantially more difficult to self-insure, particularly for very small groups that likely lack the capital reserves to cover highly variable claims experience attendant to their size.

DFR's Stop-Loss Insurance Regulation is not Supported by Adequate Consideration of Relevant Evidence

DFR has not adequately considered stop-loss insurance regulation in the context of Vermont's health care system, instead focusing on one aspect of stop-loss insurance - risk assumption. DFR commissioned the actuarial firm Oliver Wyman to estimate the impact of the Rule Amendment on employer risk ceding and employer insurance cost; DFR and Oliver Wyman failed to evaluate the broader impact of stop-loss insurance regulations on Vermont's health care system. This failure results in the regulatory solution that is predetermined by the method of investigation as opposed to DFR evaluating multiple policy options and implementing the most effective option from the set.

Specifically, while the Oliver Wyman report (Report) adequately considers risk ceding, it does not consider or estimate whether the Rule Amendment will harm Vermont's efforts to realize a unified health system. The Report solely

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[1] The distinction between shared upside risk versus shared upside and downside risk is a definitional rather than a practical distinction in some circumstances. For instance, imagine a level-funded plan with 5 participating groups. If one group loses money but the aggregate experience of the 5 groups results in a savings, all 5 group participants share in savings. Whether the money received by the one group that lost money (Loss Group) is viewed as a payment for the good experience of the aggregate of the 5 groups or as an offset of the Loss Group's loses is a definitional not a practical distinction. On a practical level, the Loss Group's downside risk is reduced through shared aggregate upside risk (when the 5 groups, in aggregate, save money).

[2] Some of the regulatory limitations DFR faces due to ERISA preemption have likely decreased in the wake of Rutledge v. Pharm. Care Mgmt. Ass'n, 141 S. Ct. 474 (2020). However, we recognize that it is not yet clear how lower courts will interpret and apply Rutledge.

focuses on risk ceding and predicted employer costs. Risk ceding and employer costs are important, but not the only factors that should be considered when evaluating stop-loss insurance regulation. The Report's focus on risk ceding and employer cost to the exclusion of other factors, including the impact of self-insurance on employee's access to various state coverage mandates and ACA Essential Health Benefits, leads to the Report being biased.

Neither the Report nor DFR mention the substantial evidence that small group stop-loss insurance is problematic. This evidence is from sources as varied as the National Association of Insurance Commissioners (NAIC), the State of New York, and consumer protection organizations.[3] Both the Report and DFR fail to acknowledge evidence that does not support the Rule Amendment. DFR should consider both actuarial data and broader policy concerns when developing stop-loss insurance regulation. In the present case, based on the material submitted to the Office of the Secretary of State, DFR has only considered actuarial evidence but not broader policy evidence or the impact of self-insurance on employees.

The Rule Amendment Provisions the HCA Supports with Suggested Improvements

Although we do not fully support DFR's general approach to stop-loss insurance regulation, there are several components of the Rule Amendment that improve the status quo. First, the HCA supports adjusting upwards the minimum ISL and ASL attachment points to account for changes in medical trend and inflation. We also support the requirement that DFR reevaluate, on a regular basis, whether minimum attachment points ensure adequate employer risk assumption.

Second, the HCA supports the Rule Amendment's anti-lasering provision that prohibits, for small groups, attachment points for an enrollee that exceed three times the attachment point chosen for the policy. Anti-lasering regulations are a common form of state stop-loss insurance regulation and should be adopted as a basic consumer protection regardless of whether lasering has yet taken hold in a particular market. DFR's anti-lasering protection is a step in the correct direction. We encourage DFR to consider a complete ban on lasering and not just lasering that exceeds three times the attachment point chosen for the policy.

Third, we support having higher minimum attachment points for "micro" groups.[4] We encourage DFR to consider an outright ban of the sale of stop-loss to "micro" groups and to aggressively exercise its authority to ensure that brokers and stop-loss insurance carriers comply with state fair advertising law.

Blue Cross Blue Shield of Vermont's Proposed Changes Undermine Vermont Health Care Reform Efforts

We do not support BCBSVT proposed change to the Rule Amendment that caps the minimum ASL attachment point for groups of twenty-five or fewer employees at 150 percent of expected claims.

It bears noting that nine of the ten groups BCBSVT references as being impacted by the Proposed Amendment have less than 10 members. These are exactly the types of "micro" groups that present the gravest experience risk and the largest threat to select against the Exchange given the dynamic that small groups can purchase fully-insured health insurance once it is clear that they will have adverse claims experience. Further, BCBSVT's proposal highlights the

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[3] Milliman, Inc., Statistical Modelling and Analysis of Stop-Loss Insurance for Use in NAIC Model Act (2012); Chollet, Self-Insurance and Stop-Loss for Small Employers (2012); N.Y. Ins Law §§ 3231(h) and 4317(e); Abbot et al., Implementing the Affordable Care Act's Insurance Reforms: Consumer Recommendations for Regulators and Lawmakers (2012).

[4] For the purposes of this public comment, a "micro" group is a group with twenty-five or fewer employees.

need for robust risk disclosure to "micro" groups as BCBSVT and its broker currently sell or market stop-loss insurance to at least twenty groups with ten or fewer members based on its own admission.

The reality in Vermont is that BCBSVT is selling self-insurance products to "micro" groups. Focus on the premium cost savings to employers who purchase such products is myopic. From a broader perspective, selling self-insurance products to "micro" groups is selling a product to employers that they, due to their size, are unlikely to have the human resource expertise to evaluate and understand the risks such plans pose to their business and their employees. Put differently, self-insurance products are being sold to employers who are unlikely to fully understand that lower premiums come with increased financial exposure and that, given their small size, their claims risk, from year to year, is reasonably likely to be volatile.

How DFR can Better Protect Vermonters through Increased Stop-Loss Insurance Regulation

DFR could implement various stop-loss insurance regulations to better protect Vermonters and Vermont's health care reform efforts. We outline three specific regulations below that would better protect Vermonters.

First, DFR should prohibit any form of lasering in stop-loss insurance. The Rule Amendment prohibits, for small groups, setting a minimum attachment point for a covered individual that is more than 300% of the attachment point chosen for the policy in addition to prohibiting changing the attachment point for the group or individual during the policy period. This consumer protection is an improvement over the status quo. However, DFR should adopt regulations similar to states such as Utah, Maryland, and Colorado and prohibit lasering altogether and prohibit the exclusion of an employee or dependent from the policy for things such as disability status, accessing care, and medical history.[5]

Second, DFR should prohibit the sale of stop-loss insurance policies to small groups as has New York. If such a prohibition would be problematic in Vermont, as DFR has expressed to the HCA, DFR should prohibit the sale of stop-loss insurance policies to groups of a size that actual claims experience is highly volatile due to the small number of covered lives. If DFR believes that such a rule would be too disruptive to small groups that currently self-insure, the rule could "grandfather in" small groups that currently self-insure but prohibit the sale of stop-loss insurance to any new small groups.

Third, DFR should amend Section 5 of the Rule Amendment to require a disclosure to small groups related to expected claims variance (and attendant variance in financial risk to the employer) associated with small group size. Current and ongoing efforts to market self-insurance products to groups as small as five make the need to ensure that employers are not mislead by deceptive marketing more pressing.

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[5] Utah Code Ann. § 31A-43-301; Md. Code, Ins., § 15-129; Colo. Rev. Stat. § 10-16-119.5.

* Listed person at the Green Mountain Care Board contacted by DFR regarding the Rule Amendment.

Thank you for considering these comments.

Sincerely,

/s/ Eric Schultheis
Eric Schultheis
Staff Attorney

/s/ Michael Fisher
Michael Fisher
Chief Advocate

CC:

Jessica Holmes, Green Mountain Care Board Member *
Robin Lunge, Green Mountain Care Board Member *
Kevin Mullin, Green Mountain Care Board Chair *

Annotated Text

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
Section 2. Scope
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Section 6. Form Filing Requirements
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Section 8. Severability
Section 9. Effectiveness

Section 1. Authority and Purpose.

This regulation 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 regulation 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 regulation 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 regulation:

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 regulation, 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 regulation, 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.

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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, 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 include a prominent statement describing the specific financial risks associated with such higher attachment points. The statement 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 which is unjust, unfair, inequitable, misleading, or contrary to the law of this state.

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

Section 9. Effectiveness.

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This regulation shall govern health care stop loss insurance policies with coverage issued or renewed on or after the effective date of the regulation; provided, the Commissioner may waive or modify one or more of the provisions of this regulation 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.

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STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

Regulation H-2009-02 (Revised)

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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.

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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 regulation, 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:

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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.

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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, 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 include a prominent statement describing the specific financial risks associated with such higher attachment points. The statement 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 which is unjust, unfair, inequitable, misleading, or contrary to the law of this state.

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

Section 9. Effectiveness.

This regulation shall govern health care stop loss insurance policies with coverage issued or renewed on or after the effective date of the regulation; provided, the Commissioner may waive or modify one or more of the provisions of this regulation 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.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 8 : Banking And Insurance

Chapter 001 : Policy And Administration

(Cite as: 8 V.S.A. § 15)

§ 15. Rules, orders, and administrative interpretations

(a) In addition to other powers conferred by this title and 18 V.S.A. chapter 221, the Commissioner may adopt rules and issue orders as shall be authorized by or necessary to the administration of this title and of 18 V.S.A. chapter 221, and to carry out the purposes of such titles.

(b) The Commissioner may, whether or not requested by any person, issue written advisory interpretations, advisory opinions, non-objection letters, and no action letters under this title and regulations issued under it, including interpretations of the applicability of any provision of this title and regulations issued under it. Such interpretations shall be presumed to be correct unless found to be clearly erroneous by a court of competent jurisdiction. The Commissioner may make public all or a portion of an advisory interpretation.

(c) The Commissioner may waive the requirements of 15 V.S.A. § 795(b) as the Commissioner deems necessary to permit the Department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the Commissioner under this title, Title 9, or 18 V.S.A. chapter 221.

(d) Upon written request by the Office of Child Support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the Commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, 9 V.S.A. chapter 150, and 18 V.S.A. chapter 221, if the Commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For purposes of such findings, the written representation to that effect by the Office of Child Support to the Commissioner shall constitute prima facie evidence. The Office of Child Support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the Commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or

introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the Department receives a certificate issued by the Office of Child Support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order. (Added 1999, No. 153 (Adj. Sess.), § 1, eff. Jan. 1, 2001; amended 2009, No. 42, § 33a; 2013, No. 73, § 58, eff. June 5, 2013; 2015, No. 63, § 3, eff. June 17, 2015; 2019, No. 20, § 106.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 8 : Banking And Insurance

Chapter 141 : Captive Insurance Companies

Subchapter 001 : General Provisions

(Cite as: 8 V.S.A. § 6015)

§ 6015. Rules and regulations

The Commissioner may adopt and from time to time amend such rules relating to captive insurance companies as are necessary to enable the Commissioner to carry out the provisions of this chapter. (Added 1981, No. 28; amended 2003, No. 55, § 7.)

VERMONT

Proposed Rules Postings
A Service of the Office of the Secretary of State

Search Rules

Deadline For Public Comment

Deadline: Jul 02, 2021

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	21P013
Title:	Health Care Stop Loss Insurance (H-2009-02).
Type:	Standard
Status:	Proposed
Agency:	Department of Financial Regulation
Legal Authority:	8 V.S.A. §§ 15, 6015.
Summary:	The proposed amendments to the rule: 1) increase minimum annual attachment points for claims incurred per individual; 2) increase the minimum annual aggregate attachment points; and 3) limit higher attachment points for any individual or group of individuals within small employer groups to three

	times the attachment point chosen for the policy.
Persons Affected:	Vermont Department of Financial Regulation; Green Mountain Care Board; Small employers who provide or are considering providing self-insured health benefits to their employees; Certain insurance providers and brokers; and Employees of small employers;
Economic Impact:	The amendment will bring individual and aggreate attachment points for stop-loss insurance plans in line with inflation and medical trend while leaving it economically viable for small employers, particularly those with low expected claims levels, to self-insure. To the extent that the amendment affects health insurance premiums on Vermont's health benefits exchange, the Department anticipates that there will be little to no impact. The amendment increases the average percentage of incurred claims expected to be retained by employers, reducing the financial incentive for employers to leave the exchange and self-insure.
Posting date:	Apr 14,2021

Hearing Information

Information for Hearing # 1

Hearing date:	05-17-2021 10:00 AM ADD TO YOUR CALENDAR
Location:	Microsoft Teams: Conference ID: 363 817 659#
Address:	Call In +1 802-828-7667
City:	Montpelier
State:	VT
Zip:	n/a
Hearing Notes:	

Information for Hearing # 2

Hearing date:	06-09-2021 11:00 AM ADD TO YOUR CALENDAR
Location:	Microsoft Teams: Conference ID: 968 334 889#
Address:	Call in +1 802-828-7667
City:	Montpelier
State:	VT
Zip:	n/a
Hearing Notes:	Link to Meeting: https://teams.microsoft.com/l/meetup-join/193ameeting_Njk2MGJmZDUtNTEzNS00ODYwLTlhZmItMTRhZTY2 /0?context7b22Tid223a2220b4933b-baad-433c-

9c02-70edcc7559c6222c22Oid223a22c76b5926-1029-44c1-9afe-4906b7745

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUE OF THE RULE.

Level: Primary
Name: Sebastian Arduengo
Agency: Department of Financial Regulation
Address: 89 Main Street
City: Montpelier
State: VT
Zip: 05620-3101
Telephone: 802-828-4846
Fax: 802-828-5593
Email: Sebastian.Arduengo@vermont.gov

Website Address: https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-] VIEW WEBSITE

Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPI REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITT FROM THE PRIMARY CONTACT PERSON.

Level: Secondary
Name: Emily Brown
Agency: Department of Financial Regulation
Address: 89 Main Street
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Zip: 05620
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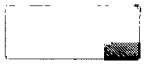
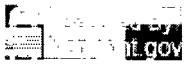
Fax:
Email: emily.brown@vermont.gov
SEND A COMMENT

Keyword Information

Keywords:

Insurance
Health Care Stop Loss Insurance
Small Employer
Small Business





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	St. Albans Messenger Ben Letourneau (ben.letourneau@samessenger.com)	Tel: 524-9771 ext. 117 FAX: 527-1948 Attn: Ben Letourneau
	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA **Date of Fax:** April 12, 2021

RE: The "Proposed State Rules " ad copy to run on **April 22, 2021**

PAGES INCLUDING THIS COVER MEMO: **2**

NOTE **8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at https://secure.vermont.gov/SOS/rules/ . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Health Care Stop Loss Insurance (H-2009-02).

Vermont Proposed Rule: 21P013

AGENCY: Department of Financial Regulation

CONCISE SUMMARY: The proposed amendments to the rule: 1) increase minimum annual attachment points for claims incurred per individual; 2) increase the minimum annual aggregate attachment points; and 3) limit higher attachment points for any individual or group of individuals within small employer groups to three times the attachment point chosen for the policy.

FOR FURTHER INFORMATION, CONTACT: E. Sebastian Arduengo, Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620-3101 Tel: 802-828-4846 Fax: 802-828-5593 Email: Sebastian.Arduengo@vermont.gov URL: https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment.

FOR COPIES: Emily Brown, Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620-3101 Tel: 802-461-6949 Email: Emily.Brown@vermont.gov.
