



Compliance Alert

September 16, 2011



Michigan Creates Health Insurance Paid Claims Assessment Act

Michigan has become the newest state to institute an assessment on paid health care claims. [Michigan Senate Bill No. 348](#), effective August 24, 2011, creates the "Health Insurance Claims Assessment Act" and initiates a 1% assessment on paid health claims. Employer-sponsored group health plans may be wondering about the impact of this Act and whether it is preempted by ERISA. The Act directly assesses insurance companies, third party administrators and group health plan sponsors. However, the Act will likely cause an increase in the amount health plan sponsors pay for coverage since the assessment will likely be passed on to the plan sponsor.

The Act broadly defines the "paid claims" that are assessed the 1% surcharge. Eligible "paid claims" include actual payments made to a health and medical services provider or reimbursed to an individual by a third party administrator, excess loss or stop loss carrier, a property or casualty carrier, or any other type of carrier, including an insurer, health care corporation, or group health plan sponsor. Under the Act, paid claims include payments:

- made under a service contract for administrative services;
- cost-plus or noninsured benefit plan arrangements;
- for health and medical services provided under group health plans; and
- for individuals, nongroup, and group insurance coverage to residents of Michigan that affect the rights of an insured person in Michigan and bear a reasonable relation to Michigan, even if the coverage is not delivered, renewed, or issued for delivery in Michigan.

Several categories of payments are exempted from the definition of paid claims including:

- claims-related expenses;
- certain payments under an incentive compensation arrangement
- claims for specified payments under forms of insurance other than health insurance (e.g. homeowners or automotive insurance);
- claims for services provided to a nonresident of Michigan or for services provided outside the state to a Michigan resident;
- claims paid for federal employees or payments made by Medicare, Medicaid, and the Veterans Administration;
- FSA reimbursements; and
- Co-pays, deductibles, and other healthcare costs paid by an individual.

The Act also sets up a reporting and payment schedule, along with record-keeping requirements. Each carrier and third party administrator with eligible paid claims must file a return and payment for the preceding quarter on April 15, July 15, October 15, and January 15 of each year. The 1% assessment may decrease for 2013 and later years. If the amount collected in 2012 exceeds \$400 million, then the assessment rate for 2013 will be reduced to the rate that would have resulted in the collection of \$400 million in 2012.

The Self-Insurance Institute of America, Inc. (SIIA) has filed a complaint in Federal Court requesting a declaration that Michigan's recently passed Health Insurance Claims Assessment Act is preempted by the Employee Retirement Income Security Act (ERISA). SIIA also seeks an injunction against implementation and enforcement of the Act involving self-insured group health plans that are subject to ERISA or their business partners. "This lawsuit is consistent with the association's ongoing commitment to protect self-insured employers, captive insurance companies and their business partners from unlawful regulation," said association Chief Operating Officer Mike Ferguson. "State policy-makers, in particular, should be aware that SIIA is prepared to litigate when they overstep their regulatory authority."

The state of Michigan has filed its response to SIIA's lawsuit seeking a federal court to rule that the state's recently enacted health care claims act is preempted by ERISA. According to the association's legal counsel, arguments presented in the state's response were largely anticipated and did not effectively counter SIIA's complaint. The time table for future action is that SIIA will be filing at least one additional brief by March 16, with the state given a second response opportunity shortly thereafter. A hearing could be scheduled as early as mid-April.

We will continue to move forward to comply with this legislation, but will closely monitor the situation and send updates as they become available.

If you have questions or comments about this notice, please contact your Account Manager.

Boon-Chapman Benefit Administrators
9401 Amberglen Boulevard, Building I, Suite #100
Austin, TX 78729
(800) 252-9653
www.boonchapman.com