



**PROTECTING AND PROMOTING SELF-INSURANCE
AND ALTERNATIVE RISK TRANSFER SINCE 1981**

**Appropriations Committee Public Hearing
March 14, 2014
Self-Insurance Institute of America**

My name is Adam Brackemyre. I am the director of state government relations with the Self-Insurance Institute of America (SIIA).

SIIA is a national trade association that represents companies involved in the self-insurance marketplace, including self-insured organizations and their benefit partners, mostly in the small and midsize market segments.

I wish to focus my comments today on Section 24 of Senate Bill (SB) 21.

ERISA Pre-Emption

While the SIIA appreciates the public policy objectives set forth, we believe that the drafters of the legislation have not fully considered that the provisions, if enacted, would likely be preempted by the Employee Retirement Income Security Act (ERISA). We understand the following:

- Section 24 enacts Section 38a-47(a) which taxes “All domestic insurance companies and other domestic entities subject to taxation under chapter 207”
- Section 24 enacts new Section 38a-47(c) which provides for the assessment and collection of the tax pursuant to new §38a-48.
- Section 24 enacts new Section 38a-48(b) calculating the tax on each domestic entity based on the percent of Chapter 207 taxes that domestic entity already pays, “based upon the amounts shown as payable to the state for the calendar year on the returns filed with the Commissioner of Revenue Services pursuant to chapter 207”;
- Entities that pay taxes under Chapter 207 include:
 - Section 12-202. Tax on net direct premiums of domestic insurance companies.
 - Section 12-202a. Tax on net direct subscriber charges of health care centers.
 - Section 12-210. Tax on net direct premiums of nonresident and foreign companies (i.e., licensed insurance company incorporated by or organized under the laws of any other state or foreign government)
- Under ERISA Section 502(d), self-funded plans are federal, not state entities. Therefore, they cannot be considered to be Connecticut entities or “domestic” insurance carriers.

Notwithstanding the definitional problems, ERISA preempts states from “deeming” self-insured group health plans if that is their clear intent. Finally, even the state was to somehow circumvent the ERISA’s “deemer” clause, the overall thrust of this section is contrary to the basic ERISA preemption purpose of nationwide uniformity in plan reason.

For these reasons, SIIA respectfully requests that Section 24 of SB 21 be amended so that it does not attempt to subject self-insured group health plans to the requirement as this would likely trigger a legal challenge in federal court from SIIA and/or other individual affected employers.

We are currently engaged in an ERISA preemption case against the state of Michigan because that state did not properly recognize federal law as part of the legislative process. We trust Connecticut would like to be more deliberate in this regard.

Connecticut's Vaccine Assessment

Currently, Connecticut assesses self-insured plans through their third-party administrators, to pay for child vaccines. We understand that, years ago, the state required physicians to provide vaccines through the purchasing pool and that self-funded plans have no other option to pay for vaccinations.

Section 24 takes this vaccine assessment and expands it to provide additional funding for the State Innovation Model (SIM) project.

SIIA has equity concerns about expanding the vaccine assessment aside from the aforementioned ERISA ones. While self-insured plan enrollees directly benefit from their children being vaccinated, many would derive no direct benefit from the SIM assessment. In fact, it is highly likely that states that receive SIM grants produce different solutions to similar problems. Thus, the primary beneficiaries of the SIM would be Connecticut residents enrolled in state-regulated insurance plans and state-managed insurance programs.

Self-Insured Plans Adopt Uniform Benefits to Fit Unique Populations

Generally, self-insured plans provide uniform benefits to plan beneficiaries wherever they may live and adopt plan structures that are easy to administer. Self-insured plans will not incorporate each state's health systems reforms into their benefits because the plan would become unduly complicated and more expensive to administer.

Conclusion

SIIA requests Section 24 be redrafted to remove self-insured plans from the proposed SIM assessment. Thank you for your consideration.