OUTSIDE the Beltway

Written by Dave Kirby

Seemingly Every Day We Wake Up to New Challenges from the States

In the comedy movie "Groundhog Day," Bill Murray's character wakes up each morning to the very same events as the day before in a seemingly unending succession of identical days into the future.

Some in the self-insurance industry may have a similar feeling as a succession of state encroachments on self-insured employee health plans continue to arise. Various states – and agencies within states – are engaged in challenges to self-insured plans in the form of claims tax schemes, limits on stop-loss insurance, demands for proprietary data and other burdens.

These challenges appear to ignore the reality that ERISA preemption of state interference with self-insured health plans has been upheld at the highest level, the U.S. Supreme Court. Despite that, states continue to pester the self-insurance industry, often with the tacit if not outright support of the National Association of Insurance Commissioners (NAIC).

"It's usually a question of money," says SIIA Vice President of State Government Relations **Adam Brackemyre**. "Most states' budgets are very tight, many trying to work out of projected deficits. Any revenue they can find short of general public tax increases is coveted by legislators."

A current imposition of tax upon self-insured health plans occurred in Illinois where legislature bills (HB 4300 and HB 5750) propose a 1% health insurance claims assessment (HICA) that is estimated to raise between $700 and $800 million and draw federal matching funds for a state with a projected budget shortfall of $4 billion.

"We immediately got to work on these bills," Brackemyre reports, citing efforts to educate the Illinois business community and other stakeholders on the threat to employers who sponsor self-insured plans. The threat of such taxes is high: it has been estimated that a previously adopted Michigan health claims tax has cost employers in excess of $1 billion. (That Michigan plan is now under further review at the behest of the Supreme Court.)

SIIA has reached out to key Illinois constituents both in Washington, DC and in the state. SIIA lobbyist **Chris Condeluci** spoke to top-level business groups who could leverage their influence to Illinois employers and trade associations and from them to the legislature.

Catherine Bresler, Vice President of Government Relations for The Trustmark Companies of Lake Forest, IL has advocated against the Illinois health insurance claims assessment among both legislators and her business network. "It is just counter-intuitive for a state to push up costs of self-insurance for employers who are doing a good, responsible job of caring for their employees," Bresler said.

SIIA's Brackemyre wrote to the sponsor of Illinois HB 4300 – which drew the most early support among Illinois legislators – to ask for exemption of self-insured plans from the tax. "We believe that the recent U.S. Supreme Court decision in *Gobielle v. Liberty Mutual* supports SIIA's argument that the HICA is preempted by federal law," Brackemyre wrote.

Subsequently HB 4300 sponsor **Rep. Jack Franks** offered an amendment to his bill to strike the health insurance claims assessment. That amendment had not received a vote by the Illinois House Revenue and Finance Committee as this issue went to press. Observers estimate that consideration of the Illinois tax could extend into the fall as the legislature is in session pretty much full time.

The cost of states' interference with self-insurance is a burden shared by employers and TPAs alike. Naturally, taxes on health claims revert to employers but there are also in-state demands by various agencies that accrue financial and administrative costs, according to **Brooks Goodison**, president of the Diversified Group TPA in Marlborough, CT.

Goodison cited specific examples of state burdens on self-insured plans:

> *"We have to pass on costs of collecting fees such as the New York and Massachusetts Public Goods Surcharge or fees for childhood immunization in Connecticut, New Hampshire and Maine. And we have administrative costs that provide no value to our clients,"* Goodison said.

"In some states we may have three or even four different agencies demanding data from us for various purposes such as studies of outcomes-based payment plans, penetration of childhood immunization, incentive-based payment systems or taxes on claims," Goodison said. "For any of these purposes we are required by law to report data that's not ours to give. But states find it convenient to come to TPAs to gather aggregate data rather than take the trouble to contact individual employers."

In "Groundhog Day," Bill Murray's character gains freedom from daily repetition by changing his ways. SIIA's goal is for the self-insurance industry to gain enough educational and political clout to match that success.

SIIA members who wish to join the state government relations team are invited to contact Adam Brackemyre at the Washington, DC, office, (202) 463-8161 or abrackemyre@siia.org.