

What Employers Need to Know When Going from Fully-Insured to Self-Funded



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FAQs

What is self-insurance?

The plan sponsor retains the risk of loss for paying claims under the plan. Key is "risk shifting". A fully insured contract transfers the risk of loss to an insurance carrier in exchange for a fixed premium paid to the carrier by the employer. Self-insured companies retain the risk themselves, paying for all claims either from a trust or directly from corporate funds. Stop-loss insurance plays a role, but risk must remain with plan sponsor to avoid state regulation as insured – "attachment point".

Is self-insurance common?

Many employers with more than 200 employees self-insure some or all of their health & welfare benefits. Self-insurance for employers with under 200 employees is increasingly becoming more common since ACA's inception in 2010. All but the largest employers purchase some level of stop-loss insurance to cap their potential exposure.

What benefits are commonly self-insured?

- ❖ Medical
- ❖ Account Based Plans (FSAs, HRAs, HSAs)
- ❖ Prescription drugs
- ❖ Dental
- ❖ Wellness (on-site clinics, etc.)
- ❖ Short-term disability (STD)
- ❖ Vision
- ❖ Workers' compensation

What entities should be cautious about sponsoring a self-insured plan?

- ❖ Small employers - financial risks and unpredictable cash flow
- ❖ MEWAs– prohibited in many states – enhanced federal scrutiny

Self-funding vs. Fully-Insured

A fully-insured plan's fixed premiums is like paying for cable.....



....it doesn't matter how many hours you watch, you still pay the same bill each month

A self-funded plan works more like your power bill.....



....you will pay some fixed costs, but the balance is determined by your consumption

Fully-insured Plans vs. Self-funded Plans

- The primary difference is how the plans' costs/claims are funded.
- However, they also involve different financial risk models, different parties, different administrative and operational requirements, and different degrees of flexibility in plan design
- Communications to participants should be clear when plan self-funded – since many employers utilize the insurance carriers as third party administrators (TPAs), many employees assume benefits paid by the carrier.



Fully-insured vs. Self-funded Players

Fully-insured

- Plan Sponsor (limited)
- Broker/Consultant
- Legal
- Insurance Carrier

Self-insured

- Plan Sponsor (expansive)
- Broker/Consultant
- Legal
- Actuarial
- Accounting/auditing
- Stop-loss carrier
- Administrator
(TPA/ASO/PBM/COBRA)
- Trustee

Reasons an Employer Might Choose to Self-insure

1. Eliminates Carrier Profit Margins and Risk Charges

- Carriers assess profit margins and risk charges for insured policies (approximately 3-5% annually), but self-insurance removes this charge.

2. Eliminates state premium taxes

- Self-insured programs, unlike insured policies, are not subject to state premium taxes. The premium taxes on average are 2% - 3% per year.

3. Avoidance of state mandated benefits

- Although both insured and self-insured plans are governed by federal law, self-insured plans are exempt from state insurance laws. State benefit mandates can add to the cost and complexity of insured employer benefit programs, whereas ERISA allows an employer more flexibility in the design of his or her benefit program.



Other Reasons an Employer Might Choose to Self-insure

4. Avoid the adverse impact of Affordable Care Act – details later

5. Employer control vs. carrier benefit plan control

- Employers who want to revise insured benefits typically must negotiate with carriers over benefit changes and the associated cost or savings. The carrier may be unwilling or unable to make the desired change to an insured plan as many are “off the shelf plans”. The self-insured employer, however, can simply instruct the claims administrator to make the change providing greater flexibility and customization in the health benefits plan design.

6. Detailed Claims Data History = Full Transparency

- Full transparency into claims data allows for claims analysis using software, reporting, and investigative techniques to find areas where plan spending can be curtailed better equipping you to make future decisions.

Other Reasons an Employer Might Choose to Self-insure

6. Cost Containment Savings opportunities

- Utilize innovative cost containment options to increase savings opportunities that insurance carriers prohibit due to PPO contracts (e.g. reference-based pricing).
- Cost containment savings go directly to the bottom-line cost of the plan
- Better wellness program integration and transparency

7. Choice of claims administrator

- An insured policy can be administered only by the insurance carrier. A self-insured plan can be administered by an insurance company or independent third party administrator (TPA), which gives the employer greater choice and flexibility.

Reasons Employer Might Choose not to Self-insure

- Increased Administrative Responsibilities
- Fear of Exposure and Unpredictable Cash Flow
- Concern over privacy issues and claims administration
- Increased Legal Responsibilities
 - many employers have false sense of security in fully-insured plans because they are less involved with plan administration – there is still liability!

ACA Impact on Insurance Costs

- ❖ Slight trend toward self-insurance by more small employers to avoid some of the more expensive elements of PPACA. Still primarily utilized by large employers.

- ❖ For example, self-funded employer health benefits are **exempt** from exposure to the following requirements of the ACA:
 - Taxes and fees applicable only to fully-insured health insurance
 - Annual health insurance industry fee
 - Risk Adjustment Program and Fee
 - Health Insurance Marketplace User Fees
 - Community rating
 - Mandates for essential health benefits



SELF-FUNDED	VS.	FULLY-INSURED
Pays claims from general assets (or assets set aside for plan use), administrative fees (self or TPA), and stop-loss premiums	FUNDING	Monthly premiums to insurance carrier
Employer	FINANCIAL RISK	Insurance Company
Employer, TPA, Stop-loss carrier	ADMINISTRATION	Insurance Company
Greater flexibility in plan design	PLAN DESIGN	Limited to insurer's limited plan designs
Federal regulation, but ERISA preempts state laws	COMPLIANCE	Plan must comply with state and federal regulation

Before You Self-Insure . . . Consider

- Financial exposure
- Cash flow
- Workforce
- Plan design and coordination
- Plan document responsibility
- Stop loss
- Cost savings



- Funding Issues
- Claims responsibility
- Privacy considerations
 - ADA/GINA
 - HIPAA
- Potential for misuse of claims data
- Plan litigation
- Subrogation and Reimbursement

Funding Issues for Self-Insured Plans

- Funded vs. Unfunded under ERISA (*don't confuse with self-funded, self-insured or fully-insured for state regulation and ERISA preemption*)
 - Unfunded: Claims are paid from the employer's general assets; plan money is not segregated from operating money
 - Funded: Money is set aside to pay claims and other plan expenses (usually held in trust); monies set aside are "plan assets"
 - Three basic categories of plan assets:
 1. participant contributions
 2. employer assets, if they have been dedicated to plan purposes
 3. amounts that are attributable to plan assets (e.g., earnings, refunds, or rebates)

Funding Issues for Self-Insured Plans

- ERISA Trust Requirement: All “plan assets” must be held in trust
 - Important Exemptions:
 - 125 plan exemption for participant premiums (no segregation of premiums from employer’s general assets)
 - Assets held by insurance carrier (even when acting as a TPA)
 - Segregated Accounts: Will not necessarily create a “funded” arrangement unless intent to create beneficial interest – should be revocable and in name of employer
 - zero-balance accounts vs. TPA check-writing authority over employer account
- Trust Options:
 - Voluntary Employee Beneficiary Associations (VEBAs) (IRC 501(c)(9))
 - IRC 115 tax-exempt trust for gov. employers,
 - Taxable trusts

ERISA Fiduciary Requirements

- Imposes a code of conduct on plan fiduciaries to act:
 - Solely in the interests of participants & beneficiaries (duty of undivided loyalty);
 - For the exclusive purpose of providing plan benefits, or for defraying reasonable expenses of plan administration (exclusive benefit rule);
 - With the care, skill, prudence & diligence that a similarly-situated prudent person would use (prudent expert rule);
 - By diversifying the plan's investments to minimize risk of large losses (duty to diversify investments); and
 - In accordance with the documents/instruments governing the plan (if consistent with ERISA)
- ERISA fiduciaries can be personally liable for breach of duties
 - Named fiduciaries (fiduciary responsibility may be delegated) vs Functional fiduciaries



Fiduciary Issues for Self-Insured Plans

- ERISA restricts use of “plan assets” under the exclusive benefit rule and fiduciary responsibility requirements
 - Plan expenses must be reasonable,
 - Plan assets must be used for the exclusive benefit of plan participants
 - use of refunds and rebates may be limited
 - No reversion to employer (be cautious of level funding).
 - **These exclusive benefit and fiduciary responsibilities apply to plan assets even if no trust!!!**

Tax Considerations for Self-Insured Plans

- Generally operates in the same manner as fully-insured
- Employee premiums may be paid pre-tax through a cafeteria plan
- Employer contributions and claims paid are tax free and generally deductible
- However, nondiscrimination rules apply and plan sponsor responsible for monitoring.
If a self-insured plan discriminates in favor of the highly compensated individuals, benefits are taxable to the HCIs.
 - No non-discrimination rules for insured plans – ACA rules on hold
 - However, cafeteria plans also have complicated non-discrimination rules that can impact fully-insured plan eligibility
- Additional tax considerations for funded welfare plans, including restrictions on advance funding of claims for deductibility purposes (IRC 419A)

Fiduciary Issues: Fully-insured vs. Self-insured

- Fiduciary Liability
 - Fully-insured: Insurer is the fiduciary for purposes of deciding claims and appeals. Employer still has fiduciary role, but minimized.
 - Self-funded: Plan sponsor has dual role of settlor and fiduciary, including for claims; TPA usually not a fiduciary, but can contract for fiduciary status for claims, plan administrator has fiduciary obligation to prudently select and monitor service providers
 - Availability of fiduciary liability insurance

Managing Financial Risk for Self-Insured Plans – Stop Loss

Employers typically carry stop-loss insurance on their self-insured health care benefit plans to cover catastrophic or unpredictable losses and to protect the self-funded employer's assets.

There are basically two types of stop-loss insurance:

1. Individual/Specific Stop-Loss Insurance

- ✓ Protects employer against large claims from any one individual
- ✓ Protects against the severity of a single catastrophic claim
 - ✓ Example: the insurance company reimburses the employer for all claims over specified limit (i.e. \$40,000) per individual per year – employer sets the limit

2. Aggregate Stop-Loss Insurance

- ✓ Provides employer a ceiling for overall claims liability (e.g. 125% of expected total annual claims).
- ✓ Protects against higher-than-expected utilization or frequency of claims from the entire group

Managing Financial Risk for Self-Insured Plans – Level Funding

- ❖ Alternative Funded Small Group Medical Plan
 - ***Self Funding “on training wheels”***
 - Guaranteed monthly premiums like Fully Insured Plans – no fluctuating payments
 - Less risk to the employer than true self-funding
- ❖ Prepackaged plan docs and specific and aggregate stop loss
- ❖ Possible refunds in healthy years
- ❖ Medically underwritten
- ❖ Higher administrative costs than true self-funding
- ❖ ERISA Plan Asset Issues
 - Insurance Carrier Exception
- ❖ Refunds of level premiums based on good experience raise ERISA issues if kept by employer
- ❖ Due Diligence in Level Funding



Managing Financial Risk for Self-Insured Plans: Partial Self-funding

- Option in between fully-insured and self-insured
 - Employer adopts high-deductible plan and adds HRA (administered by separate TPA or insurance carrier)
 - Lower-cost than fully-insured, with less financial risk than self-funded



Documentation: Fully-insured vs. Self-funded plans

- Plan Documentation & Administration
 - Fully-insured: Insurance policy, certificate of coverage, and SBCs
 - Insurance carriers do not provide wrap-SPDs; preparation of this document is one area where brokers/advisors can add value – needed for ERISA compliance
 - Self-funded: plan sponsor responsible for plan documents and SBC
 - written plan document & SPD requirements may be satisfied by same document, TPA usually creates plan document describing covered benefits, wrap plan may be needed to ensure one Form 5500 and supplementation of any ERISA-required information missing from TPA plan



Compliance: Additional Administrative Requirements for Self-funded plans

- **Form 5500 and ERISA Reporting Requirements:** No Schedule A, but a plan with assets has more extensive filing requirements, including an audit requirement if funded
- **ACA Reporting:** Self-insured plans have additional ACA reporting requirements on 1094-B and 1095-B series, which can apply even if not an ACA applicable large employer.
- **Premium rate equivalents** – identifying rates on which to base employee contributions, COBRA rates, and budgeting.
- **PCORI Fees/Tax Returns** - The employer will be responsible for filing trust returns and tax-exempt filings for VEBA status, ACA Taxes such as PCORI (July 31)

Self-insured Claims Appeal Issues

- **Claims Administration** - While the employer retains final authority for benefit design and claims payment issues, the day-to-day administration of the plan can, and should, operate in the same manner as the insured policy. Claims are adjudicated according to the plan document.
- Plan sponsor fiduciary responsible for claims procedures
- Duty to oversee TPA regarding claims if delegated
- Consequence of Faulty Procedures
- Standard of Review
 - Discretionary or De Novo
- Increased litigation risks
- Employment issues
- Stop loss integration
- ACA External Appeals Requirement



Compliance: Health Insurance Portability and Accountability Act (HIPAA)

- Fully-Insured – carrier assumes primary responsibility for privacy requirements and notice of privacy practices (employer still has duties for security compliance and privacy compliance if “hands on”)
- Self-insured: employer assumes primary responsibility and must have designated privacy and security officers, breach notification procedures, complete risk assessment, privacy and security policies and procedures, training of employees
 - Compliance burden depends on the plan sponsor’s role in administration (requirements do not apply directly to employer, but to the plan)

Compliance: Health Insurance Portability and Accountability Act (HIPAA)

- To satisfy fiduciary obligation to monitor performance of service providers, employer will interact with PHI (e.g., checking whether TPA is adjudicating and paying claims properly)
- The more PHI employers have access to, the more HIPAA liability they have . . .



Compliance: Health Insurance Portability and Accountability Act (HIPAA)

- Tips for minimizing HIPAA compliance exposure in self-funded plans:
 - Consider delegating to the plan's TPA as many of the HIPAA-related functions as the TPA is willing and able to take on (or at least consult with TPA about HIPAA policies & procedures)
 - Instruct the TPA to de-identify PHI when possible
 - Limit members of employer's workforce designated to have access to PHI to very small group
 - Make sure employees who are designated to have access to PHI are trained in HIPAA compliance
 - Consider restrictions to prevent those who are designated to have access to PHI from accessing it remotely or via portable electronic devices to minimize HIPAA security risks

Self-insured Plans Transition

- 6 to 12 month lead time at a minimum
- Important to coordinate all players involved and develop an action plan
- Documents Needed: Plan documents (TPA), stop-loss policy, Administrative Services Agreements, Wrap Plan and SPDs, Cafeteria Plan, HIPAA Privacy and Security Policies, Plan Administrative policies and procedures (claims/committee charters), ERISA Bond, Fiduciary Liability Insurance
 - Ensure terms of Plan and stop-loss policy are consistent (or that the Plan's terms are incorporated by reference) so that all claims covered under the Plan are covered by the stop-loss carrier
 - Ensure ACA eligibility requirements are approved by stop-loss carrier



Final Questions



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Thank You



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