

Compliance Considerations When Moving from Fully-Insured to Self-Funded

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When a plan moves from fully-insured to self-funded (also referred to as self-insured), most benefit compliance requirements (e.g., ERISA, COBRA, Section 125) apply in the same fashion. However, there are a few requirements specific to self-funded plans to keep in mind. These requirements are outlined below.

- **Changes in Funding and Administration**
 - Obtain actuarial determinations to discern appropriate plan costs for budgeting, setting employee contributions, and setting COBRA premiums.
 - Select and contract with a stop-loss carrier.
 - Select and contract with an administrator to coordinate processing and paying claims.
 - Determine whether the plan will be unfunded (claims paid from employer's general assets, not segregated) or funded; if funded, a trust is required, and additional reporting is required via Form 5500 (even if fewer than 100 participants), but very few employers other than public entities and union-based plans set up a funded plan.
 - May need to put additional auditing and accounting procedures in place since the employer funds the plan. A formal plan audit is generally not required unless the plan is funded.
- **PCORI Fees**
 - The employer is responsible for reporting and paying PCORI fees for self-funded plans.
 - PCORI fees are reported and paid via Form 720 by July 31st of the year following the end of the plan year (also required for short plan years).
- **§105(h) Nondiscrimination Rules**
 - Self-funded group health plans may not structure eligibility, benefit coverage, or contributions in a manner that discriminates in favor of highly compensated individuals. §105(h) does not require that all benefits be offered identically for all employees; rather, there are tests that must be run that restrict how much benefits can vary between classifications of employees.
- **Employer Reporting (Forms 1094 and 1095)**
 - All employers who offer self-funded group health plans, regardless of size, must report coverage information for all individuals (including non-employees and dependents) who are covered under the self-funded plan.
 - Applicable large employers generally report coverage in Part III of Form 1095-C.
 - Small employers (fewer than 50 FTEs) report coverage on Form 1095-B.
- **HIPAA Privacy and Security**
 - Employers likely face an increase in HIPAA compliance obligations because the employer will typically have more access to personal health information (PHI).
- **Plan Documents**
 - The third-party administrator (TPA) may provide a "benefits booklet" or coverage certificate that describes benefits provided by the plan, but the plan sponsor is usually responsible for the plan document and a Summary Plan Description (SPD) for plans subject to ERISA.
- **Claims**
 - Plan sponsors will have a choice of retaining claims determination authority or outsourcing to a TPA.
 - Claim determination authority should be clearly described in plan documents.
- **Fiduciary Responsibility**

- The plan administrator has a fiduciary duty to manage a self-funded plan in a manner that serves the best interests of the participants and the beneficiaries. This affects several facets of plan administration, ranging from handling of plan assets to selection of vendors.
- Plan sponsors who convert to self-funded status should educate themselves about their fiduciary duties.

This is a high-level review of compliance changes triggered by a move to a self-funded medical plan. We're assuming employers who are contemplating a change like this have obtained appropriate consulting assistance for design and financial analysis.

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