

Healthcare Compliance Checkup

Executive Member Benefit

Fully-Insured Plan



example

Agenda



Background



What's your risk?



How to reduce
your risk?



Appendices

Background

Hospital Price Transparency Rule

- Effective: Jan 1, 2021
- Fines increased Jan 1, 2022

Consolidated Appropriations Act

- Effective: Dec 27, 2020 + phase in – Jan 1, 2022

Transparency in Coverage Rule

- Effective: Jan 1, 2022 + phase in – 2024

Background

Key Details

Firmly establishes the employer / plan sponsor as a Fiduciary of the health plan

Requires disclosure of direct & indirect vendor compensation (charged to the plan)

Requires removal of gag clauses from plan contracts

Requires detailed reporting of prescription drug metrics to HHS, DOL and IRS

*Select safe harbors established for fully-insured groups


Fiduciary Duties According to the DOL

- Act solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
- Carry out their duties prudently;
- Following the plan documents (unless inconsistent with ERISA);
- Hold plan assets (if any) in trust; and
- Pay only “reasonable” plan expenses

UNDERSTANDING YOUR FIDUCIARY RESPONSIBILITIES UNDER A GROUP HEALTH PLAN



The Alternative

 Pensions & Investments

BlackRock to pay \$9.7 million settlement over ERISA allegations

BlackRock to pay \$9.7 million settlement over ERISA allegations ... agreed to settle a long-running class-action lawsuit alleging violations of the ... in the firm's employee 401(k) plan with a payout to participants of \$9.7 million.

Mar 25, 2021



 National Association of Plan Advisors

Schlichter Strikes a \$40 Million Settlement

The amount of attorneys' fees for Class Counsel shall not exceed ... The settlement notes that "after over four years of litigation, a ... Retirement Services—as record keeper for the 401(k) plan, "rather than obtaining bids."

Oct 15, 2020



 Florida Politics

Osceola Schools blast consultant's 'greed' in health plan choice

In the lawsuit, the school district said it paid a capped annual fee up to \$195,650 to Gallagher Benefit Services for the consultant to...

2 weeks ago



Agenda



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Appendices

Summary of Prohibited Language in Your Contracts

- “Gag clauses” seek to limit your access to and / or use of plan data
- These clauses often define plan data as proprietary, confidential, and owned by a third-party service provider
- This language is now prohibited and must be removed from all plan contracts in advance of signing or renewal

TILT reviewed three plan contracts on behalf of ALM Media and identified **two** paragraphs containing prohibited language.

Broker Compensation

What we know

- Direct compensation: \$125,000

What we found

- | | | |
|-------------------------------|---------|-----------|
| • Vision: | 6.5%-8% | \$ 1,601 |
| • Life / LTD / AD&D: | 8% | \$ 14,213 |
| • Travel Accident: | 25% | \$ 407 |
| • Critical Illness, Accident: | 9% | \$ 4,976 |

What we don't know

- | | |
|------------------|---|
| • Commissions: | ? |
| • Bonus: | ? |
| • Override: | ? |
| • Transactional: | ? |
| • Termination: | ? |

Current Plan Design (\$75K+)

CDP Saver

- Deductible: \$3,000 / \$6,000
- Max Out of Pocket: \$5,000 / \$8,000
- EE Premium: \$133 / \$268 / \$419

CDP Original

- Deductible: \$2,000 / \$4,000
- Max Out of Pocket: \$4,000 / \$8,000
- EE Premium: \$183 / \$366 / \$566

POS

- Deductible: \$1,250 / \$2,500
- Max Out of Pocket: \$5,000 / \$10,000
- EE Premium: \$251 / \$491 / \$771

Current Plan Design (\$75K-)

CDP Saver

- Deductible: \$3,000 / \$6,000
- Max Out of Pocket: \$5,000 / \$8,000
- EE Premium: \$58 / \$133 / \$210

CDP Original

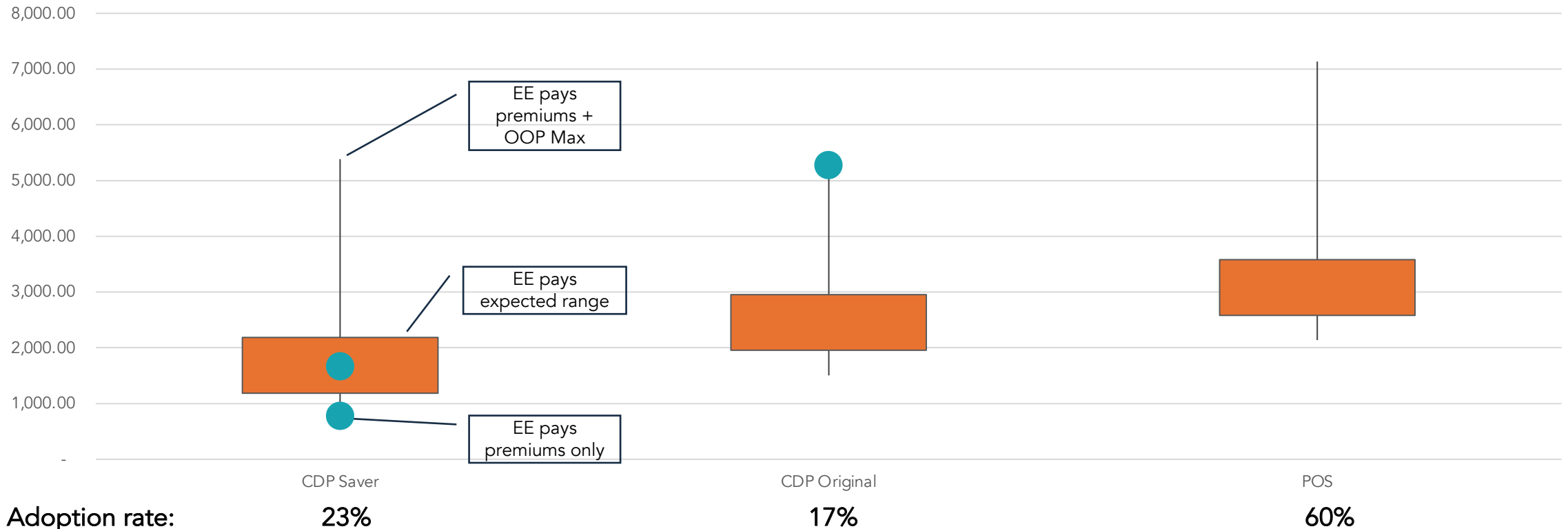
- Deductible: \$2,000 / \$4,000
- Max Out of Pocket: \$4,000 / \$8,000
- EE Premium: \$118 / \$240 / \$376

POS

- Deductible: \$1,250 / \$2,500
- Max Out of Pocket: \$5,000 / \$10,000
- EE Premium: \$168 / \$327 / \$518

Current Plan Design (\$75K-)

Plan Comparison (Individual \$75K-)



Adoption rate:



Is the POS Worth it?

Individual

Deductible savings

- Deductible difference: \$1,750
- Annual premium difference: \$1,317
- Deductible reached: 1 x 3 years
- Additional cost: $\$1,317 \times 3 = \$3,951$
- Savings: $\$1,750 - \$3,951 = -\$2,201$

Max Out of Pocket savings

- MOOP difference: \$0
- Annual premium difference: \$1,317
- MOOP reached: 1 x 10 years
- Additional cost: $\$1,317 \times 10 = \$13,170$
- Savings: $\$0 - \$13,170 = -\$13,170$

Is the CDP Original Worth it?

Individual

Deductible savings

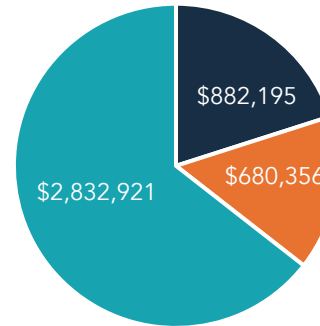
- Deductible difference: \$1,000
- Annual premium difference: \$723
- Deductible reached: 1 x 3 years
- Additional cost: $\$723 \times 3 = \$2,170$
- Savings: $\$1,000 - \$2,170 = -\$1,170$

Max Out of Pocket savings

- MOOP difference: \$1,000
- Annual premium difference: \$723
- MOOP reached: 1 x 10 years
- Additional cost: $\$723 \times 10 = \$7,230$
- Savings: $\$1,000 - \$7,320 = -\$6,320$

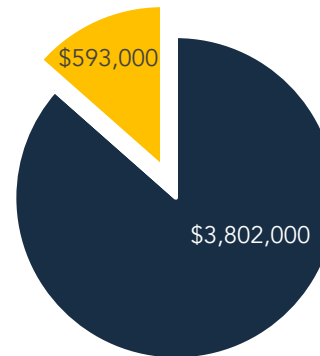
Medical Premiums Review

Premiums Paid



■ CDP Saver ■ CDP Original ■ POS

Premiums with Corrected Adoption Rates

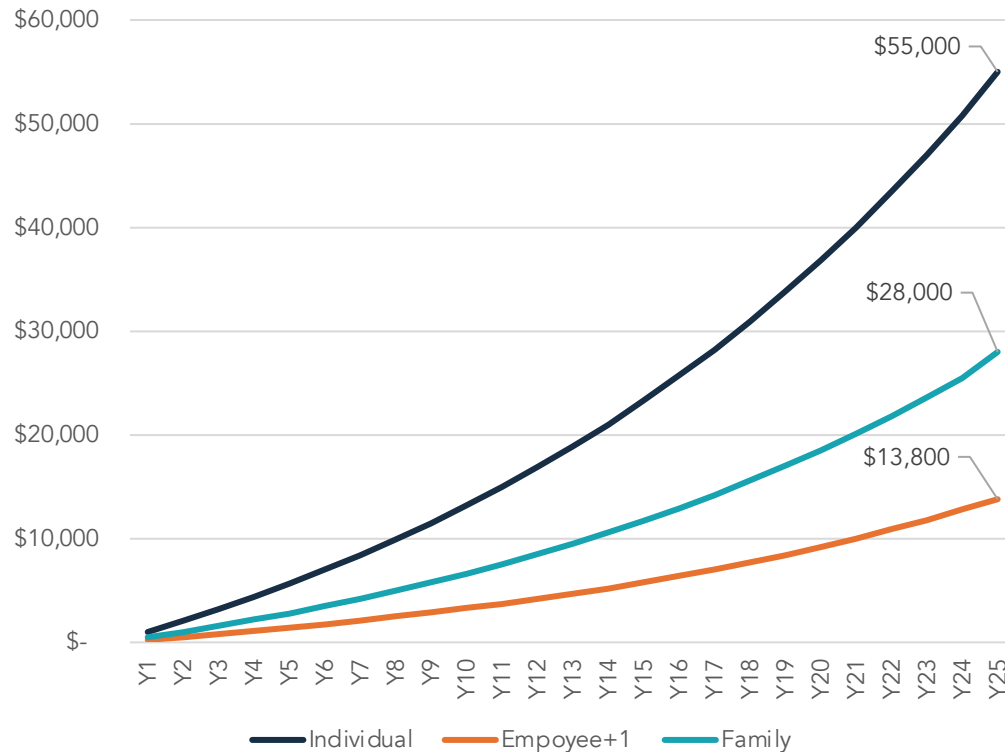


■ CDP Saver ■ Overpaid Premium

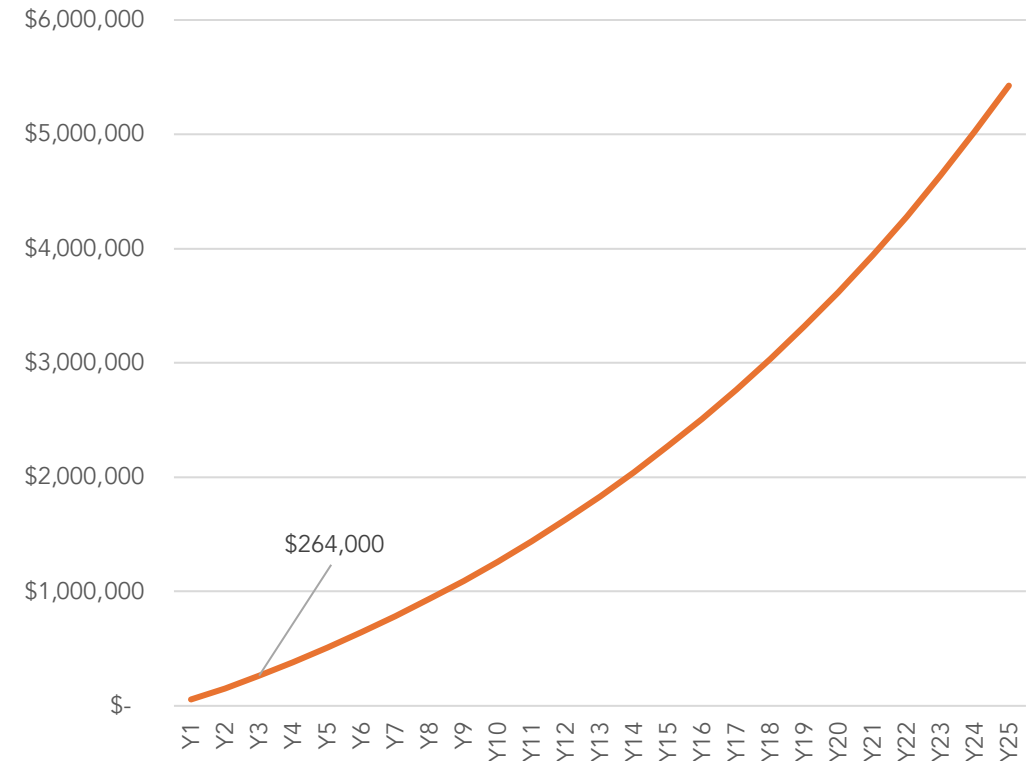
Your Estimated Risk: \$600,000 per year * 5 years = **\$3,000,000**

Plan Design Opportunity

Projected HSA Balance



Community HSA Balance



Agenda



Background



What's your risk?



How to reduce
your risk?



Appendices

Frist Steps: What you should do



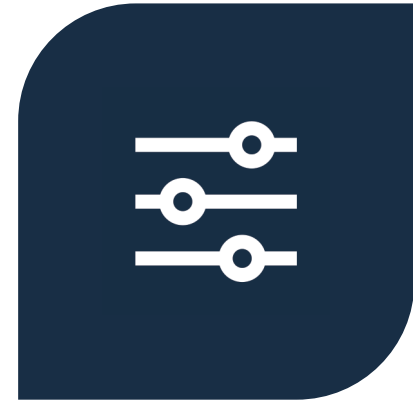
Establish & document a fiduciary process

- Fiduciary process
- Fiduciary committee
- Conflict free



Benchmark broker compensation data

- Gather compensation information
- Compare costs & services to determine "reasonableness"



Review plan design & take action

- Benchmark plan design
- Create goals around plan outcomes & improvement
- Gather RFI / RFP from potential vendors

Fiduciary Process

1. Engage

- Acknowledge your new role
- Secure agreements

2. Explore

- Collect information
- Identify risks

3. Envision

- Review existing plan
- Develop strategy

4. Execute

- Document decisions
- Audit process

5. Examine

- Reporting
- Review outcomes

Committee Charter

Charter and Responsibilities of the [COMPANY] Health Committee

Purpose:

To provide oversight of ERISA Health & Welfare Plans and Non-ERISA Plans sponsored by [COMPANY] or its subsidiaries and/or affiliates (collectively referred to as the "Company"). Such plans and arrangements are set forth on Attachment A, and are categorized as "ERISA Plans" or "Non-ERISA Plans" and are collectively referred to as the "Plans."

Composition:

The [COMPANY] Health Committee (the "Committee") will consist of at least three, but no more than five, voting members. Initial members of the Committee shall be appointed by the Board of Directors of the Company (the "Board"). Members may be removed by, and future members may be appointed and removed by, the Board.

Committee Responsibilities and Authority:

- Act as a "Named Fiduciary" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), with respect to the oversight, control and management of (a) the objectives of such ERISA Plans, (b) the assets of the ERISA Plans, (c) the investments and funding policies of such ERISA Plans.
- Operate the ERISA Plans for the sole benefit of the participants.
- Approve the health plans offered under the Plans.
- Approve the appointment of vendors for the Plans, and the policies and operating procedures governing service providers.
- Appoint and retain service providers to assist in the administration of the Committee's duties under this charter and under the Plans, including such legal, clerical, accounting, consulting and actuarial services as it may require or as may be required by any applicable laws or regulations.
- Establish and periodically review the policies and/or guidelines of the Plans.
- Periodically review the performance Plan vendors and service providers to determine the effectiveness of services provided and "reasonableness" of fees.
- Receive, review and keep on file reports of ERISA Plan performance, financial condition, receipts and disbursements of assets of the ERISA Plans.
- Review and approve expenses charged to the ERISA Plans.

- Vote proxies on behalf of the Plans to the extent responsibility to vote such proxies has not been allocated to investment managers.
- Hold regular meetings, prepare reports (or require Company officers, employees, and/or service providers to prepare reports), and be available to report to the Board on matters as the Board deems appropriate.
- Act by a vote of the majority of Committee members present at a meeting, or by unanimous written consent. A majority of the Committee members shall be present to constitute a quorum for a meeting.
- Prepare an annual report regarding the ERISA Plans for the Board.
- Appoint and remove the trustee for the Plans and the Plans' trust, and enter into a written trust agreement with the trustee and provide direction to the trustee, which may involve but need not be limited to direction of investment of all or part of the Plan assets and the establishment of investment criteria.
- Enter into such contracts and agreements as it deems desirable or necessary for carrying out the duties of the Committee, as set forth in this charter or in the Plans.
- Appoint such subcommittees as it deems necessary or desirable. Members of any subcommittee serve at the pleasure of the Committee and may resign at any time by giving written notice to the Committee. Subcommittees shall have such responsibilities as determined by the Committee and shall report to the Committee at such times as determined by the Committee.
- Delegate to one or more persons, subcommittees, or committees such powers and duties as it determines. A delegate may (but need not) be an employee of the Company or an affiliate.
- Delegate, in writing and in accordance with Plan documents, day-to-day management of the Plans investments. Any such delegate shall serve at the pleasure of the Committee and may resign his or its duties by giving written notice to the Committee (unless the Committee and a delegate have agreed that a different procedure is applicable to such delegate). A delegate shall report to the Committee at such times as determined by the Committee. The Committee shall monitor the performance of any delegates.
- Report to the Board.

Indemnification:

- To the maximum extent permitted by applicable law, the Company shall indemnify and hold harmless each member of the Committee against any and all claims, demands, lawsuits, losses, liabilities, damages, costs and expenses, including counsel fees, incurred by such person and any liability, including any amount paid in settlement with the Committee's approval, arising from the person's action or failure to act relating to the Plans. To the maximum extent

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permitted by applicable law, no member of the Committee shall be liable for any act or omission of any other member of the Committee or other director, officer, or employee of the Company. The rights of indemnification provided hereunder shall be in addition to and without limiting any right to which any person concerned may otherwise be entitled to by contract or through the Company's certificate of organization or operating agreement, including, without limitation, the right to receive advances in respect of indemnification rights, or as a matter of law, and shall inure to the benefit of the heirs, executors, and administrators of any such person. The Board, at the Company's or any affiliated employer's expense, may settle any such claim or demand asserted, or suit or proceeding brought, against any member of the Committee (or its delegate) when such settlement appears to be in the best interest of the Company. The foregoing indemnification shall also extend to any individual (or the members of any committee) who is delegated any fiduciary responsibility under this Plan by the Committee. Nothing in this Section shall be deemed an admission or construed as evidence that the Committee or any member thereof is a Plan fiduciary for any particular circumstance or purpose.

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Compensation Disclosure Worksheet



Covered Service Provider Disclosure Information

The Consolidated Appropriations Act of 2021 (CAA) amends ERISA Section 408(b)(2) and requires service providers to disclose specific information to group health plan fiduciaries.

Who is covered by these disclosure requirements?

A Covered Service Provider (CSP) is a service provider that enters into a contract with a group health plan and reasonably expects to receive \$1,000 or more in direct or indirect compensation in connection with services provided to the plan.

What information must be disclosed?

All CSP must disclose the following information, in writing, to a responsible plan fiduciary:

- Description of services provided to the plan
- Fiduciary status disclosure (will the services be provided in a fiduciary capacity?)
- Description of all direct compensation
- Description of all indirect compensation
- Description of all transactional compensation
- Description of all termination compensation

Which kinds of plans subject to this disclosure?

The disclosure requirements apply to all ERISA-covered group health plans including:

- Medical / prescription drug plans
- Dental plans
- Vision plans
- Health Flexible Spending Account (FSA) plans
- Health Reimbursement Arrangement (HRA) plans

When is disclosure required?

All CSP must disclose this information in advance of the date the contract is expected to be signed or renewed.

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Covered Service Provider Disclosure Worksheet

As a Covered Service Provider, please complete the following disclosure worksheet and return it to your plan contact as soon as possible.

Covered Service Provider:

Employer / Plan Sponsor:

Description of Services:

(Please note if each service will be provided in a fiduciary capacity)

- 1.
- 2.
- 3.

Description of Direct Compensation:

- May be expressed as amount, formula, per capita charge, or any other reasonable method
- If additional compensation may be earned, also include a good faith estimate and a description of the circumstances under which the additional compensation will be earned

Description of Indirect Compensation:

- Identify the payer of the indirect compensation
- Identify the service(s) provided in association with the indirect compensation
- May be expressed as amount, formula, per capita charge, or any other reasonable method
- If additional compensation may be earned, also include a good faith estimate and a description of the circumstances under which the additional compensation will be earned

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Description of Transactional Compensation:

(Compensation based on business placed or retained, ex. commissions, finder's fees)

- Identify the payer of the indirect compensation
- Identify the service(s) provided in association with the indirect compensation
- May be expressed as amount, formula, per capita charge, or any other reasonable method
- If additional compensation may be earned, also include a good faith estimate and a description of the circumstances under which the additional compensation will be earned

Description of Termination Compensation:

(Any compensation associated with termination of the contract)

- Identify the payer of the indirect compensation
- Identify the service(s) provided in association with the termination compensation
- May be expressed as amount, formula, per capita charge, or any other reasonable method
- If additional compensation may be earned, also include a good faith estimate and a description of the circumstances under which the additional compensation will be earned

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What ERISA attorneys are saying

Determination of the appropriate medical plan to select is a different type of investment decision than investing in a 401(k) plan, but the same fiduciary principles are applicable.

- Marcia Wagner, Wagner Law Group

We believe that these rules will have a *significant impact* on health plan coverage — *more than anything else we have seen since the passing of the ACA*. It is a heavy lift for plans for the next few years. Plan sponsors should be sure that they have a basic understanding of the rules so that they can *create workstreams and budgets as soon as possible* in 2021.

- Mary E. Powell & Sarah Kanter, Trucker Huss

Agenda



Background



What's your risk?



How to reduce
your risk?



Appendices

List of Appendices

1. Establishing a Fiduciary Process for a Health Plan
2. Sample – Health Plan Committee Charter
3. Sample – Health Committee Conflict of Interest Policy & Disclosure Form
4. Broker Compensation Disclosure Worksheet
5. A Call to Action – Ballard Spahr LLP
6. Continuity of Care – Ballard Spahr LLP
7. Health Plan Fiduciaries – Ballard Spahr LLP
8. Prohibition Against Gag Clauses – Ballard Spahr LLP
9. Transparency Requirements – Ballard Spahr LLP
10. Understanding Your Fiduciary Responsibilities Under a Group Health Plan – US Department of Labor