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

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.

As always, should you have any questions, please contact your Parker, Smith & Feek Benefits Team. While every effort has been taken in compiling this information to ensure that its contents are totally accurate, neither the publisher nor the author can accept liability for any inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it.