



**Consulting Headlines:
The Hottest Topics in Benefit Plan Administration**

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Today's Speakers



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Agenda



- Political Update
- Incorporating Vendor Programs
- Gaps in Coverage
- Involving Employees
- Exclusions
- DOL Audits



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The BCRA Is On Life Support



- A grim CBO score
 - Est. 22 million would lose insurance by 2020
- Divisions within the conference
 - Conservatives and moderates playing tug-of-war
- No room for error
 - Need 50 votes to pass (V.P. tiebreaker)
- The pressure is on!
 - Either change stated positions, withdraw the bill, or let it go down in defeat
- Time is short
 - On Tuesday, Sen. McConnell delayed the August recess to buy more time for a vote
 - He left himself ~\$200 billion to play the numbers game



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The Scramble to Revise the Senate Bill



- The Cruz amendment
 - The “Consumer Freedom Option”
 - A revision that can get 50 votes?
- Other ideas
 - Flexibility with health savings accounts
 - More opioid treatment funding (\$45 billion)
 - More money for stability funds
 - Net investment tax changes
 - No big changes to Medicaid expected
 - Taxes on wealthy Americans will **not** be repealed
- Two sticking points: pre-existing conditions and Medicaid cuts



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The Timeline & the “Secret” Plan



- The Latest Timeline
 - Thursday - draft bill(s) released
 - Early next week – CBO score(s) released
 - Mid-next week – vote on the motion to proceed
 - Next few weeks – floor vote
- The Options
 - Delay the vote again
 - Hold the vote, members vote against motion to proceed, bill dies
 - Hold the vote, members vote for motion to proceed, bill fails
 - Hold the vote, members vote for motion to proceed, bill **passes**
- Sen. Graham (R-SC) Has A “Secret” Alternative Proposal
 - Developing an alt. proposal, trying to woo Democrats
 - Hard to see this going anywhere...



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Back to Repeal & Repair?



- Republican senators also cannot agree on what to do if they fail to pass the bill
- Plan B
 - Repeal Obamacare and work with Democrats to fix the ACA (puts pressure on Republican holdouts) → includes Senators McConnell (R-KY), Collins (R-ME), Johnson (R-WI), McCain (R-AZ)
 - Repeal Obamacare and let it “crash & burn!” (but, presumably, repair at a later date) → includes Senators Cruz (R-TX), Lee (R-UT), Paul (R-KY), Sasse (R-NE)
- The bottom line – markets are in freefall, but working with Democrats to save the ACA would be politically toxic for Republicans



Donald J. Trump @realDonaldTrump · Jun 30

If Republican Senators are unable to pass what they are working on now, they should immediately REPEAL, and then REPLACE at a later date!

🗨 34K 🔄 25K ❤ 93K ✉



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Incorporating Vendor Programs



- Concept Vetting: viability, compliance, usage, best practices...
- Program Creation: emphasis on contracts and plan language
- Sales: who needs this? How to market it? What's the real value?
- Implementation: group onboarding, other vendor incorporation, etc.



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Incorporating Vendor Programs



Example: Telemedicine!

- A TPA contacted us regarding a proposed telemedicine program. The primary questions were regarding plan language:
 - Should it be stated within the existing Plan Document?
 - Should there be a separate stand-alone policy governed by ERISA?
 - How would a program like this affect an HDHP?
 - How can member incentives be structured?
 - Can this be offered to all employees, or just those enrolled in the plan?



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Incorporating Vendor Programs



Example: Dialysis!

- A broker inquired regarding a dialysis vendor's services. The questions centered around the compliance aspect:
 - Are Medicare rates enforceable payment?
 - How does a program like this work within a PPO network?
 - Can members be balance-billed?
 - Can the plan lower benefits for people with ESRD unless they enroll in Medicare?



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Gaps in Coverage



- Common “gapped” document pairs include:
 - SPD and stop-loss policy
 - ASO agreement and SPD
 - PPO contract and stop-loss policy
 - SPD (or carve-out) and PPO agreement
 - PPO agreement and “carve-out”
 - SPD and Handbook
 - Handbook and stop-loss policy
 - Vendor agreement and SPD



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Gaps in Coverage



Oddly Common Gap: Leaves of Absence & Continuation of Coverage!

- Leaves of absence / continuation of coverage listed in one document (SPD, Handbook) but not the other
- Addressing and avoiding conflicts in continuation for all leaves (bereavement, personal, vacation, sick days, floating holidays, voting, jury duty, witness duty, PTO)
- Employer vs. Plan requirements
- States have their own laws, which can be confusing and conflicting



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Gaps in Coverage



Example: SPD Leave vs. Handbook Leave vs. Stop-Loss Policy!

- Employee handbook allows unlimited disability leave at the employer's discretion...
- ...but SPD provides 30 days before coverage lapses
- Member on employer-approved disability leave for more than 30 days
 - Employer made promises to employee and spouse that coverage would continue
- Employee and spouse injured in car accident while out on disability, after 30 days
- Coverage violates the SPD and may cause a stop-loss gap!

- **This is a three-way gap; the Handbook caused the employer to violate the SPD, which caused a stop-loss problem.**



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Involving Employees



- **Cost-containment is not limited to the SPD.**
- Handbook incentives (employer level)
- SPD incentives (member level)
- Claim audit and review programs
- What is the employer's role? What is the TPA's role?

Why is this so important?



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Exclusions



- Source-of-injury rule under HIPAA/ERISA (domestic violence or medical condition)
 - Should be added as a catch-all rather than only certain exclusions
- Causation
 - Example: injuries caused *while* committing an illegal act
 - What if the illegal act didn't contribute to the injuries?
- Previous interpretations of the same language
 - Example: two members driving drunk; one is "VIP" so plan chooses not to exclude...
- "Overrides" – always at the Plan's discretion – but how to handle?



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Exclusions



Example: Causation!

- SPD excludes claims incurred while driving while intoxicated
- Member was indisputably DWI, stopped at a red light, and got broadsided by truck
- The SPD language *does* support the denial...
 - ...but courts have stated that the language must specifically disclaim causation, or a causal link will be read into the exclusion
- Exclusion is enforceable if SPD says "...the DWI does not need to have been, or contributed to, the cause of injury."



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DOL Audits



- Pre-existing conditions
- Mental Health Parity
 - Using skilled nursing, home health, etc. benefit limits as the only guides to compare parity...
 - Dollar limits vs. frequency limits
- Are funds held in trust?
- Are the plan's payment limitations enforceable?
 - In line with the terms of the SPD? Are they objectively reasonable?



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DOL Audits



Example: Member Complaints of Nonpayment!

- Large health plan failed to pay *many* claims on time
- Two distinct issues: network contract was violated, and members being billed
 - Most providers elected to bill members rather than sue the group
- DOL took an active interest after receiving member complaints about this group
- DOL requested years of obscure business and trust records
- Audit is still ongoing, since 2015...



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