

Excerpt 8: Self-Funded Plans -- A Battle on Two Fronts

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The more things change, the more they stay the same. Self-funded plans are gaining in popularity, but this is nothing new.

Back in 1970, when health insurers were inventing the HMO and the concept of managed care, the government was also concerning itself with health insurance.

At that time, the federal government wanted private business to handle the problem of healthcare. In order to encourage more employers to provide health insurance for their employees, they came up with the "Self-Funded Plan."

These self-funded plans were a miserable failure in the 1970s. They were rife with abuses, subject to legal imbroglios, and produced nothing but problems for employers, insurers, and especially for employees. If too many employees fell ill at one time, employers often ran out of funds to pay for their treatments.

In their infinite wisdom, employers and insurance companies are embracing them once again.

When a person tells me that their treatment has been denied—and they have a self-funded plan—I ask them to explain what "self-funded" means, and how a self-funded plan works.

People never have a clue.

The self-funded plan puts you in the weakest possible position as an insured person. You have signed away most of your rights, due process, and leverage. When they decide not to pay, you had better win your case on the first go-round, or you will proceed directly to the loving arms of the Department of Labor.

I have fought cases with self-funded plans, and I have won them. However, in order to win them you must have a clear picture of how self-funded plans work, who has decision-making power, and how to play both sides off against the middle.

Not understanding your self-funded plan can be a fatal mistake.

The Employer

A self-funded plan is attractive to employers, because it is less expensive than a traditional insurance plan. Instead of paying premiums to an insurance company, the payments for your medical treatments come directly out of the employer's bank account.

Employers do not have the manpower, expertise, or resources to set up such a plan, so they look to a health insurer to do this. You, as an employee, see what looks like a benefits booklet, with "Acme Insurance" all over it. You would not know from the slim insurance brochure that you receive at work that Acme Insurance is not your insurer.

As a matter of fact, in a self-funded plan—you have no insurer at all.

Your employer is the decision-maker in this set-up. Think about it. It's bad enough when the insurance company gets to decide whether or not you get your lifesaving treatment. Now your employer gets to decide.

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What qualifications does your boss have to decide whether or not your child receives a bone-marrow transplant?

Of course, your employer is not an insurance company. Consequently, they are not subject to your state's insurance laws. You cannot even file a complaint with the Insurance Commissioner, because he has absolutely no jurisdiction over your employer.

Since they are not subject to state insurance regulations, your employer does not have to provide certain benefits—such as minimum post-partum hospital stay—which is mandated by state law.

Guess who oversees self-funded plan, and is your legal recourse in case of disputes? The Department of Labor—in other words, the federal government.

Perhaps worst of all, lawsuits against your employer for denials of medical treatments go straight to Federal District Court. Good luck getting a verdict in less than a year. And if you do win? All you get is the amount that your employer should have paid in the first place. No damages, no pain and suffering.

When it comes time for the employees to make their benefit choices, employers actively promote the self-funded option. One employer in my area offered a prize drawing for everybody who chose the self-funded plan.

Talk about a booby prize.

The Insurer

Joke's on you. In the self-funded plan, there is no insurer.

"But Acme Insurance's name is all over my insurance brochure," you say, "Aren't they the insurer?"

No. When it is a self-funded plan, the insurance company magically becomes the "Third Party Administrator." They process the claims, they administer the plan.

The self-funded plan is the sweetest of sweet deals for the insurance company.

Since Acme Insurance—in the self-funded plan—is no longer an insurance company, they enjoy all of the same advantages as your employer. They are not subject to state insurance statutes and regulations. If you sue them, the case will go to federal court. If you win, which will take forever, there will be no punitive damages. All you will get is the amount that they should have paid for your treatment in the first place, and they may not even have to pay court costs.

If your appeals within the self-funded plan are exhausted, you will have to look to the federal government (the Department of Labor) to pursue your case. Good luck with that. Last time I checked, they had a six-month time period to consider an appeal.

You will not be able to use state laws or regulations to hold your employer and the third party administrator to task. The only law that you have to back you up will be found on the Department of Labor website, under the "ERISA" section.

If you are appealing a self-funded plan, be sure to study the health insurance section of ERISA, and make sure that all parties are following the federal regulations.

Few employees understand how self-funded plans work. Consequently, it is easy for both the "insurer" (third party administrator) and the employer to keep you running around in circles, chasing your tail, and never figuring out how to win your case, and to reverse their denial.

You

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You come down with cancer, and need treatment costing a half-million dollars. How eager will your employer be to pay for it? So not eager. Dead set against.

How does this weird employer/insurer/employee arrangement play out in real life? You receive your denial letter from the insurer, who is really a third party administrator. The insurer says, "We don't get to decide. Your employer gets to decide."

So, you go to your employer, who says, "We don't decide. We go with whatever the medical director of the insurance company decides."

And so it goes, if you let it. With you running around, chasing your tail, trying to figure out who is in charge.

Since your employer is not an expert on medical treatments, and the money for those treatments comes directly out of their pocket, and there is no oversight or regulation—the self-funded plan is ripe for abuse.

One of the more shocking cases was that of a gal from Minnesota. She needed spinal surgery, her husband was the employee. After they submitted their request for the surgery, the husband's boss brought him into his office. The boss closed the door and said, "You are one of our upper-level managers. You get more perks and benefits than all of the junior managers. If we approve this surgery for your wife, other employees will think that we are playing favorites."

The employer denied the surgery, because other employees might be jealous. If I had been in charge of the case, I would have quoted every outrageous word in my appeal, and copied every executive above that boss.

They chose not to take this step; they didn't want to stir the pot, make trouble, embarrass the boss, or get the husband in trouble. They launched their appeal from a place of fear, and they lost their appeal.

If you aren't ready to go all the way, throw anybody and everybody under the bus, take no prisoners, have no fear—don't bother to challenge a self-funded plan.

My First Self-Funded Case

My first self-funded case involved the largest employer—and the largest insurer—in my state. Matthew had worked for The Corporation, and been a member of a labor union, for thirty-four years. He had already been denied twice for the same lifesaving surgery that I had undergone two years before.

He had been phoning and pestering and talking to executives and union leaders at the company for months. His union did not advance his case one inch, nor did the executives. "What is your union doing for you?" I asked, "I am doing their job."

He said, "They tell me to keep doing what I am doing."

Your boss won't help you, because the company doesn't want to pay. The union won't help you, because it's not their job. The insurance company won't help you, because they don't have to. The insurance commissioner won't help you, because no "insurer" is involved.

In a self-funded plan, you are seriously on your own.

Probably the worst, the most disempowering feature of the self-funded plan is that you—the ill person who fears losing your job and benefits—has to fight your insurer AND your employer.

When I fought and won Matthew's appeal, I didn't know much about self-funded plans. All I knew was that the employer had decision-making power. And I observed that the employer and the insurer

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were both pointing fingers at each other, saying, "Not my job."

I decided that the only way to win against a self-funded plan was to strike at the heads of both employer and third party administrator. Intimidate them both equally, so that neither party could weasel out of responsibility.

First, I wrote a big, mean third-level appeal. They denied again, my appeal went down in flames. It is very, very difficult to intimidate the parties in self-funded plans. Both employer and insurer operate with no oversight, no regulation, no accountability. And they each have the other to hide behind.

"What is the next level?" I asked. Matthew's wife Diana replied, "An in-person hearing."

"Who will be at this hearing?" I asked. "Six vice presidents of The Corporation, two medical directors of Acme Insurance, and one corporate attorney."

It was the worst possible scenario: Third-level appeal, self-funded plan. They had no intention of paying.

After hearing our Gettysburg Addresses, it took them twenty-four hours to agree to pay. Just know that, no matter how dire the situation, it is always possible to win an appeal—even against self-funded plans.

The Summary Plan Description

Have you noticed how often I send people to their benefits booklet? In the benefits booklet, we find the legal descriptions that the insurer has used to deny our treatments. We find the appeals process that we are going to follow. Then we go to the insurer's website, and search for the medical policy statement which represents their entire case for denying the treatment.

If you have a self-funded plan, there is no benefits booklet, because there is no insurance company. What most employees get is a very slim and sketchy "brochure" about their coverage. The detailed run-down on your insurance contract is to be found in your "Summary Plan Description."

The minute your treatment is denied, request a copy of the Summary Plan Description to be faxed to you immediately. This is one area where ERISA law does offer some protection; it states that the employer must supply a copy of the SPD within thirty days of your request.

If I were in this situation, my fondest wish would be that my employer would drag their feet, say they couldn't find the SPD, exceed the thirty-day time limit. Then, guess what? I would put all that in my appeal. I would include a section entitled "The Corporation is in violation of Code of Federal Regulations, Title 29, Chapter XXV, Part 2520, Subpart B."

I would tell the long, embarrassing story of how they had managed to withhold the copy of my Summary Plan Description, and I would quote the "thirty-day rule" from the Code of Federal Regulations.

The Appeal

Most people appealing self-funded plans do not include the employer in their battle plan. They have no idea that the employer is involved in health insurance decisions. When they get done beating on the insurance company, the insurer says, "Joke's on you. The employer decided not to pay."

They were fighting the wrong battle, against the wrong opponent. They charged up the wrong hill, and lost the war.

On the other hand, if you focus only on the employer—because they are supposedly the decision-maker—they will say, "Joke's on you. The medical director of Acme Insurance decided not to

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pay."

The only way to win a self-funded appeal is to strike at the heads of both the third party administrator, and the employer.

Before you start writing your appeal, make contact with the top executive in the Human Resources department of your company. If your employer chooses to act in good faith— if the company has enough money to comfortably fund your treatment. The H.R. department may work together with the insurer, and they may pay without you having to fight the clash of the titans with your employer and your insurer.

I wouldn't count on this happening. However, it is worth a try.

If H.R. proves to be useless, move forward with your blockbuster appeal. It had better be good, because you do not under any circumstances want to lose, and have your appeal end up in the black hole that is the Department of Labor in Washington, D.C.

First, compile a list of names, titles, and personal fax numbers or email addresses for four of the highest-level executives of your branch of the company, and the headquarters of the company. I don't care how you get this personal information. Just get it.

Then, search the Web for the same personal information for the highest-level executives at the insurance company (CEO, Medical Director, VP of Quality Assurance), and at the headquarters of the insurance company.

You will fax or email your powerful appeal document to them in the middle of the night. They will all come into the office the next morning, take a look at your appeal, and start calling each other on the phone. This is how treatments get approved—even with self-funded plans.

* * * * *

Yes, self-funded plans are more challenging than traditional insurance plans. Nobody is responsible, nobody is accountable, nobody is watching. But I win these self-funded appeals, too.

I win these cases by making sure that my helpees are ready to throw all caution to the winds, leave all fear behind, and lob everything including the kitchen sink at every decision-maker they can find.

You will need to strike at the heads of both your insurer, and your employer.

If you waver, I ask, "What good is a job, if you're dead?"

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To purchase Laurie's book and CD, click here: <http://theinsurancewarrior.com/thebookandthecd.html>

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