

CHANGE YOUR FUNDING, CHANGE YOUR RESPONSIBILITIES

If you change from a fully insured to a self-insured or level-funded plan, compliance instantly becomes your responsibility, even if you use a TPA or other vendor partner. *Please note that level-funding is simply a mechanism to self-insure a health plan, and the same compliance requirements apply to both types of plans.*

1 CLAIM RESPONSIBILITY AND LIABILITY

FULLY INSURED

The insurance company is generally responsible for:

- **Making all benefit decision and paying claims.**
- **Handling claims appeals.**
- **Providing for external reviews as necessary.**

SELF-INSURED OR LEVEL-FUNDED

The employer is now responsible for the functions listed to the left. Although it typically delegates much of this to a third party, it acts in a fiduciary capacity when selecting third parties and has a fiduciary duty to monitor them (meaning it must actively monitor the third party's performance to ensure it is acting as directed and with the care, manner, and prudence expected of a fiduciary).

The plan administrator also remains liable for the compliance failures regardless of who performs the task.

2 AVOID CREATING AN ERISA TRUST

The general rule is that all plan assets must be held in a trust. All employee contributions are considered plan assets. However, this requirement is subject to an important exception. If the only source of plan assets are employee contributions, they are paid through a cafeteria plan, and are not segregated from the employer's general assets, the DOL will not require the employer to maintain a trust.

FULLY INSURED

It's fairly easy to meet this requirement provided the employer pays the premiums from its general assets within 3 months from the date the employee contributions are withheld.

SELF-INSURED OR LEVEL-FUNDED

The employer must now ensure that plan assets are not segregated from employer general assets. Segregation can happen when the employer sets aside funds for use by a TPA that pays claims. The way in which the claims account and the arrangement with the TPA are structured can be critical in determining whether there has been a segregation of assets.

Employers must look carefully at situations in which the employer deposits money into an account owned by the TPA.

3

HIPAA PRIVACY & SECURITY

FULLY INSURED

Employers can take a “hands-off” approach to PHI to avoid most of HIPAA’s requirements.

SELF-INSURED OR LEVEL-FUNDED

Employers will now have access to PHI and are therefore subject to all of HIPAA’s privacy and security requirements. These include:

- **Creating and implementing a privacy policy.**
- **Amending the health plan to meet HIPAA requirements.**
- **Providing individuals with rights, including rights to review, amend, and receive an accounting of their PHI.**
- **Preparing and providing a privacy notice.**
- **Appointing a privacy officer.**
- **Entering into business associate contracts.**
- **Adopting administrative, physical, and technical safeguards to protect ePHI.**

4

SUMMARY OF BENEFITS AND COVERAGE (SBC)

The SBC is a concise, straight forward explanation of health plan benefits. It must be provided when an individual is comparing health coverage options. Any time changes are made to coverage that affects the information in the SBC, a new SBC must be provided.

FULLY INSURED

The insurer and plan administrator are jointly responsible for creating and distributing the SBC. The plan administrator may contract with the insurer to handle these responsibilities and will not be subject to penalties if the insurer fails to preform its obligations provided that:

The plan administrator monitors the insurer’s performance and takes steps to correct any violations that it knows about.

If the administrator doesn’t have the information needed to correct the violations, it notifies participants of the problem and begins taking significant steps as soon as possible to avoid future violations.

SELF-INSURED OR LEVEL-FUNDED

The employer now has **the full responsibility** for creating and distributing the SBC.

5

PCORI FEE

The Patient-Centered Outcomes Research Institute is funded in part by fees paid by certain health insurers and sponsors of self-insured or level-funded health plans.

FULLY INSURED

Calculated and submitted **by the insurer.**

SELF-INSURED OR LEVEL-FUNDED

Calculated and submitted **by the employer.**

6

NONDISCRIMINATION TESTING

Nondiscrimination testing determines whether health plans discriminate in favor of highly compensated and key employees with respect to eligibility and benefits.

No testing currently required.

Section 105(h) testing now required.

7

ACA FORMS 1094/1095-B

The ACA requires employers to report to the IRS information about health coverage provided to their employees and to furnish statements to employees. *Note that ACA forms 1094/1095-C must be filed and furnished to employees by ALEs regardless of whether they are fully insured or self-insured or level-funded.*

Calculated and submitted **by the insurer.**

Calculated and submitted **by the employer.**

8

RECORD KEEPING

From a practical standpoint, **the insurer** produces and maintains most of this information.

The employer is now solely responsible for ensuring that it or its selected third parties maintain this information.