



Insurance Brokers &
Consultants

EPIC 2023 Compliance Series

Moving from Fully Insured to
Self-Funded

5/18/2023

[EPICBROKERS.COM](https://www.epicbrokers.com)

Presenters



Liz Mann, EPIC Director of Compliance

Liz Mann is EPIC's Internal Compliance Director. Liz and her team are responsible for disseminating information to clients about changing requirements and regulations and reviewing all plan designs and programs for compliance with Federal and State regulations. Liz is embedded into our account management team to provide timely support and guidance as ERISA-related regulations or concerns emerge in the marketplace. As a client, you have the option of directly accessing Liz or accessing her traditionally through your account team. Liz graduated Magna Cum Laude from Saint Mary's College in Notre Dame, IN with Bachelor of Arts degrees in History and French. She graduated with her law degree from University of Toledo, College of Law in Toledo Ohio in 2007. She has accumulated over 14 years of experience working in employee benefits and offers expertise in ERISA, IRS, COBRA, FMLA and ACA compliance.



Nabil Fakhoury, EPIC Director of Client Accounts

Nabil serves as senior - level liaison between the Account Management team, clients, and vendor partners. As a subject matter expert, Nabil leads and coordinates the activities of multiple internal departments to deliver best in class service to clients. Nabil acts as lead in managing, developing, and maintaining key internal and external relationships, and creating cutting edge benefits' strategies that address market headwinds and drive the industry forward. Nabil has a Bachelor of Science in Mathematics and an MBA in Finance from Florida Atlantic University; he received his degrees with academic distinction. Furthermore, his academic portfolio includes actuarial and risk management studies.



Andreena Norfleet, EPIC Compliance Consultant

Andreena Norfleet is EPIC's Internal Compliance Consultant. Andreena assists clients by providing updates with the latest news from State and Federal regulators as well as reviewing plan designs for compliance. Andreena Norfleet is a double Panther - graduating magna cum laude from Georgia State University with a Bachelor of Arts degree and in 2022, she obtained her law degree from Georgia State University College of Law. Prior to law school, Andreena managed a private urgent care clinic with 3 locations across the metro-Atlanta area, overseeing the company's compliance and revenue-cycle management departments.

Agenda

Moving from Fully Insured to Self-Funded

National Emergency Update

Public Health Emergency Update

Preventive Services Update

Questions?

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Moving from Fully Insured to Self-Funded

Compliance Considerations

Fully Insured vs. Self-Funded

Fully Insured

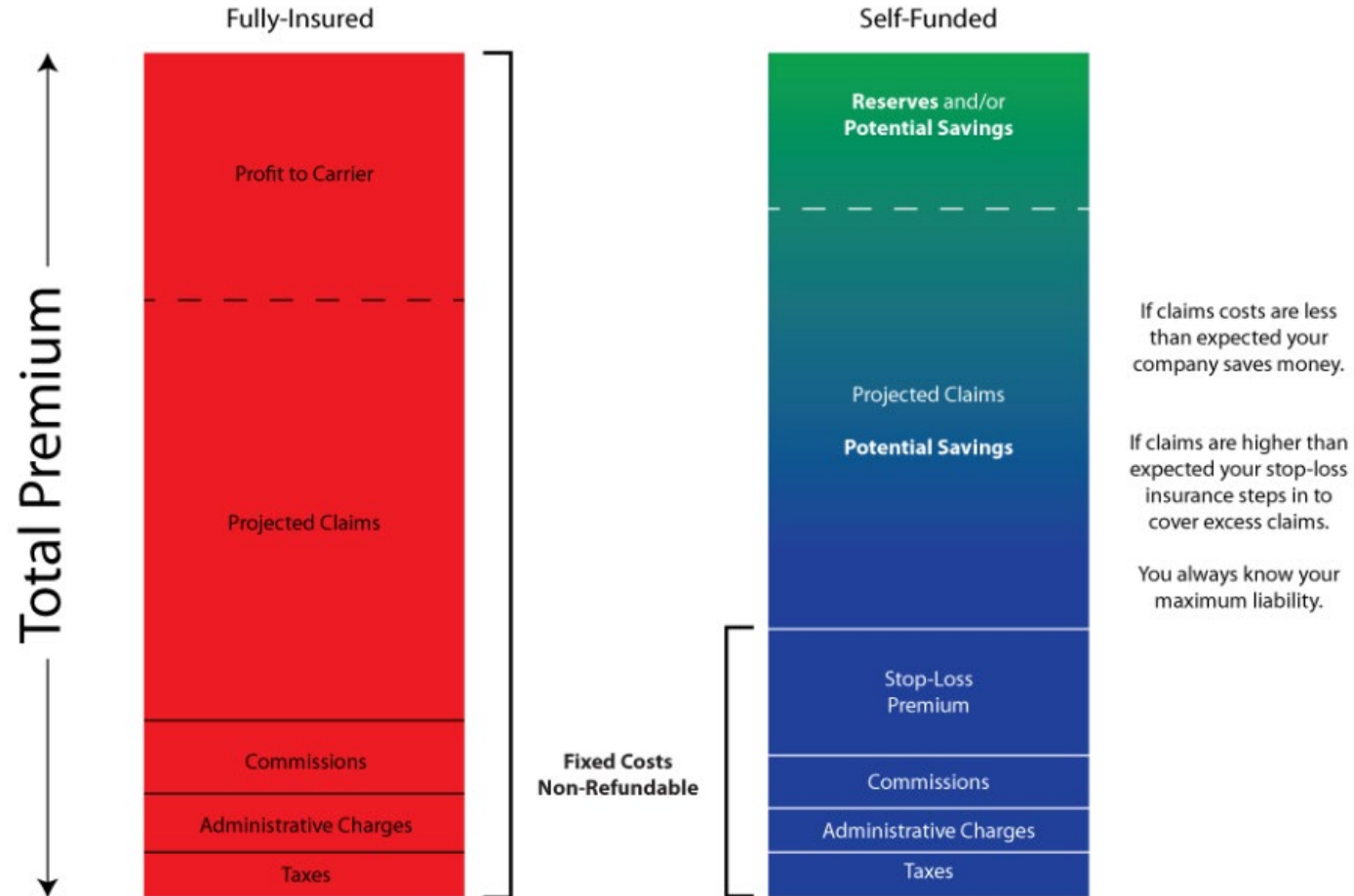
- Claims are paid by the carrier
- Insurance carrier dictates the plan design, and adjudicates claims and appeals
- Subject to state insurance laws
- Most compliance-related matters are the responsibility of the insurance carrier
- Employer exchanges risk for a predetermined fixed cost (premium) paid to insurance carrier
- Employer pays any applicable premium taxes

Self-Funded

- Claims are paid by plan sponsor rather than the insurance carrier
- Plan sponsor has control over many aspects of the plan design
- Administrator (TPA or carrier) adjudicates the claims for the plan sponsor
- Not subject to state insurance laws
- Plan sponsor takes on more compliance-related responsibilities
- Employer takes on more risk for potential lower cost

Benefits of Self-Funding

- Lower total cost in general (Carrier wins in FI)
- More control over plan design and strategy
- Not limited to insurer's plan designs and utilization control programs
- Greater flexibility to choose TPA and other service providers
- Exempt from state-mandated insurance requirements
- Greater access to plan data for benchmarking, data analytics, and predictive modeling
- Potential to benefit from improved population health and claims reduction
- Allows less risk averse plan sponsors to take on more risk
- Ability to carve-out stop loss and Rx coverage from medical carrier
- Rebates from Rx utilization are returned to plan sponsor either through a reduction in ASO fee or direct reimbursement
- One-time cash flow gain if moving from a fully-insured arrangement
- Internal rate of return (interest) on IBNR reserves



Compliance Considerations for Self-Funding

ERISA

- Plan Assets and Funding
- Fiduciary Duties
 - Act in the interest of the plan and its participants
 - Act for the purpose of providing benefits and paying plan expenses
 - Act with care and as a prudent person in that capacity would
 - Follow the terms of the plan document
- Preemption of State Laws
 - Preemption of state laws that “relate to” employee benefits
 - Plan uniformity
- Plan Documents and Notices
 - Wrap plan documents, SPDs, SBCs, SMMs

How does this differ from fully insured plans?

Compliance Considerations for Self-Funding

HIPAA

- Self-funded group health plans are HIPAA covered entities
- Privacy and Security Rules
 - Adopt HIPAA policies and procedures
 - Execute business associate agreements
 - Appoint a HIPAA privacy and security officer
 - Send HIPAA privacy notices

How does this differ from fully insured plans?

Compliance Considerations for Self-Funding

Plan Design

- ACA Market Reforms
 - Self-funded plan sponsors have more discretion to design their own plans subject to federal laws
 - State insurance laws are preempted by ERISA
 - Requirement to follow a “benchmark” plan design
- IRS cost-sharing limits

How does this differ from fully insured?

Compliance Considerations for Self-Funding

Eligibility

- ACA
 - Market reforms
 - Employer mandate
- State laws

How does this differ from fully insured plans?

Compliance Considerations for Self-Funding

Reporting and Transparency Requirements

- ACA Form 1095-C
- Form 5500
- PCORI
- RxDC
- Gag Clause Attestations
- Mental Health NQTL
- Healthcare Transparency & No Surprises Act
 - Prohibition on balance billing
 - Machine readable files
 - Pricing transparency tools

How does this differ from fully insured plans?

Compliance Considerations for Self-Funding

Non-Discrimination Testing

- IRS Section 105(h)
 - Self-funded health plan testing
- IRS Section 125
 - Required for all plans that allow employees to make salary reductions pre-tax through a cafeteria plan

How does this differ from fully insured plans?

Transition Assistance

To make the transition as seamless as possible, EPIC will partner with you and your team to **understand and manage** the changes going forward.

We'll start by providing you with a **comprehensive checklist** that covers what you need to know:

- Plan Cost and Funding
- Plan Design
- Eligibility
- ERISA
- HIPAA + COBRA Administration
- Stop-Loss
- Fees & Reporting Requirements
- Implementation



Fully Insured to Self-Funded Employer Guide

Benefits & Human Resources Guide

January 5, 2023

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W-2 Filing

Employers, of either a fully insured or self-funded plan, that file at least 250 W-2s in the preceding year must report the aggregate costs of employer-sponsored health coverage on their employee's W-2.

PCORI Fees

Self-funded plan sponsors are required to report and pay the associated fee on Form 720 by July 31 annually. The fee helps fund the Patient-Centered Outcomes Research Institute (PCORI) and the fee is based on the average number of lives covered under the policy or plan between specific dates set by the IRS. The fee is indexed annually for inflation. Fully insured plans are not required to file as their PCORI fee is included in their premiums and filed by their fully insured carrier.

Prescription Drug and Health Care Spending. (RxDC)

Employers, of either a fully insured or self-funded plan, are required to report information about the plan's prescription drug and healthcare spending by June 1st annually to CMS. Self-funded employers will need to collaborate with their TPAs, PBMs and other vendors to compile the necessary information to complete the RxDC report. Fully insured employers can generally rely on their carriers to submit the required information.

Federal and State Insurance Mandate Reporting

Employers who offer self-funded plans, regardless of size, must report coverage information to the IRS for all individuals (including employees, non-employees and their dependents) who are covered under the self-funded plan on Forms 1094-C and 1095-C by March 31, following the end of the plan year. California, Massachusetts, New Jersey, Rhode Island and Washington D.C. employer reporting requirements are similar and must be filed with each state agency if applicable. Self-funded plan sponsors must complete part three of the 1095-C form.

Required Notices

Self-funded plans must provide these notices at least once annually:

- COBRA Notice
- Uniformed Services Employment and Reemployment Rights Act (USERRA) Rights Notice
- Family and Medical Leave Act (FMLA) Rights Notice
- ERISA Rights Statement
- HIPAA Notice of Special Enrollment Rights
- Notice of HIPAA Privacy Practices
- Medicare Notice of Creditable Coverage
- Children's Health Insurance Program (CHIP) Notice
- Surprise Medical Billing Notice
- Women's Health and Cancer Act Enrollment Notice
- Newborn's and Mother's Health Protection

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National Emergency Update

National Emergency

Background

- The Outbreak Period began on March 1, 2020, and was set to end either 60 days after the end of the National Emergency or on such other date announced by the agencies
- During the NE, certain deadlines are “tolled” (disregarded/paused) for either one year from the date of the triggering event or the end of the “Outbreak Period” whichever is sooner
 - Each individual has their own one-year tolling period based on their qualifying event
 - COBRA
 - ERISA claims and appeals
 - HIPAA special enrollment rights
 - ERISA plan notices
- On April 10, 2023, President Biden signed a Congressional Resolution ending the NE immediately
- The DOL provided informal comments stating that despite the Congressional Resolution, the Outbreak Period would still end on July 10, 2023

National Emergency

Clarifying Guidance on the National Emergency

On March 27, 2023, the Departments released a set of FAQs clarifying many issues surrounding the end of the NE and PHE.

- Tolling will no longer apply after the end of the Outbreak Period
- Group health plans may allow longer timeframes
- Note: the FAQs were released before the Congressional Resolution was signed so they assume the end of the NE will be May 11, 2023

National Emergency

So when does the outbreak period actually end?

Based on the informal comments from the DOL and the FAQ guidance released in March tolling should end on July 10, 2023.

National Emergency

Next Steps

- Revise notices to remove tolling provisions
- Send COBRA election notices
- Send communications to qualified beneficiaries regarding the of the tolling period and providing new deadlines
- Send ERISA plan notices as soon as administratively practicable



Public Health Emergency Update

Public Health Emergency

- COVID-19 testing and related services must be made available at no cost-sharing both in- and out-of-network
 - Special relief for HDHPs
- COVID-19 over-the-counter (OTC) tests must be provided at no cost-sharing in-network, and for an amount that does not exceed \$12 or the cost of the test, whichever is lower, out-of-network
- COVID-19 vaccines must be made available at no cost-sharing both in- and out-of-network
- COVID-19 preventive services, such as immunizations, must be covered by health plans no later than 15 business days following approval for use.
- Requirements under the PHE ended on **May 11, 2023**

Public Health Emergency

Clarifying Guidance

- Plans are no longer required to cover COVID-19 testing but are encouraged to do so
- Changes that are reflected in the SBC must be communicated no later than 60 days prior to the date the modification becomes effective
- Material modifications not reflected in the SBC must be communicated to plan participants
 - Notice is satisfactory if:
 - The Plan previously provided notice of the general duration of the additional benefits coverage or reduced cost-sharing or
 - The Plan provides notice of the additional benefits coverage or reduced cost-sharing within a reasonable timeframe in advance of the reversal of the changes.
 - Note: Notification provided in a prior year will not be sufficient
- Until further guidance is issued, HDHPs may continue to provide COVID-19 testing and treatment

Public Health Emergency

Next Steps

- The PHE ended on May 11, 2023
- Send advance notice of reversal of changes
 - 60 days in advance for changes to the SBC

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Preventive Services Update

Braidwood Management Inc. v. Becerra

Preventive Services

Background

- U.S District Court ruled that parts of the ACA preventive coverage are unconstitutional
 - Illegally appointed task force
 - Violates religious freedom
- Appointments Clause
 - ACA's delegation to USPSTF violates the Appointments Clause because HHS cannot direct USPSTF to give a specific preventive service an "A" or "B" rating.
 - Affects preventive services recommended or updated by USPSTF on or after March 23, 2010
- Religious Freedom Restoration Act
 - Requirement to cover PrEP violates the rights of the plaintiffs who have religious objections

Preventive Services

Update

- Decision was immediately appealed, and a stay requested
- May 15, 2023, Fifth Circuit Court granted a stay
 - Now what?



Questions?