INGREDIENTS FOR A SUCCESSFUL 2022: A RECIPE FOR SELF-FUNDED PLAN SPONSORS

With 2022 rapidly approaching, employers and plan sponsors of self-funded plans must act quickly to make important health benefit plan implementation decisions.

Specifically, this upcoming plan year will create a puzzle for plans as they navigate compliance with the evolving regulatory landscape, complex COVID regulations, and the corresponding financial implications.

Not dissimilar to plan years past, employers should have already at least *initiated* the plan design discussions. These conversations are crucial as annual benefit modifications are needed to address the changing employee and participant population needs.

Plan vitality is no less important, so these revisions should be balanced against the potential economic factors. Additionally, prior to instituting these updates the employer must carefully and thoughtfully address the many regulatory requirements to ensure the plan's foundation is compliant.

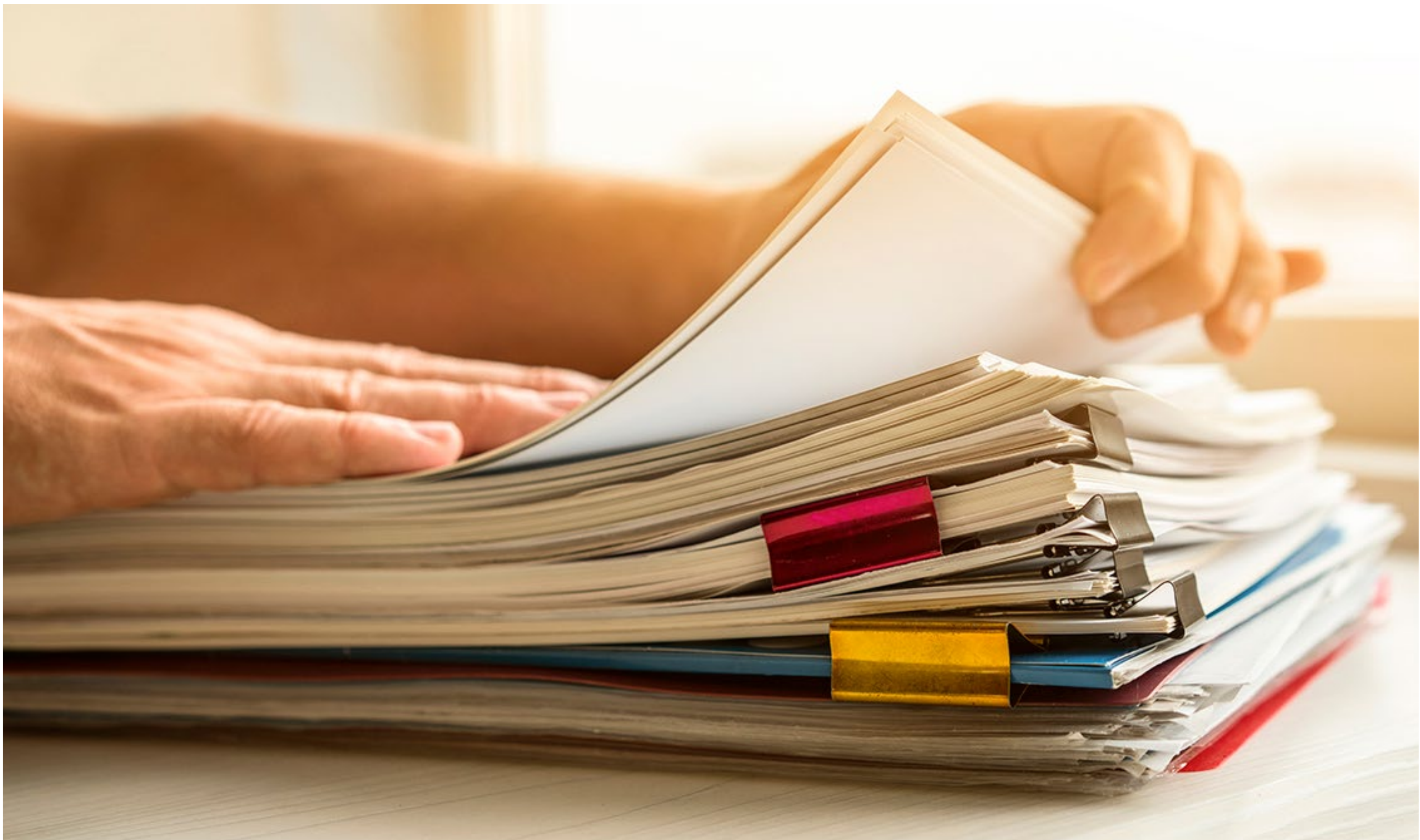
The scope of this discussion is to highlight key plan document and design revisions for the plan year beginning on or after January 1, 2022.

GETTING STARTED

When contemplating plan document updates, the claims administrator and employer should approach renewal discussions mindful of pending risks and opportunities. The goal is to implement a plan design which addresses these considerations. To maximize the plan's success for an upcoming plan year, an employer should review relevant plan materials in advance of any renewal meetings.

Items an employer should compile include:

1) The past year's claim data;
2) A list of the plan sponsor and/or plan participant's desired benefit changes and improvements;
3) Any relevant supplemental options to support the plan's success;
4) An outline of the pending compliance requirements; and
5) All corresponding agreements and materials potentially needing modification.



A non-exhaustive list of documentation that must be reviewed includes the stop loss policy, Plan Document and Summary Plan Description (PD/SPD), plan amendments, relevant administrative services agreements, vendor contracts, employee handbook, and the Summary of Benefits and Coverage (SBC).

Once the documentation is compiled, the next step is developing an action plan to mitigate the identified risks and improvement opportunities. To simplify this process, the plan might consider analyzing modifications for the upcoming plan year as they would generally fall in one of three categories – must, may, and should. This approach will ensure that employers adopt the most attractive, yet compliant and cost-effective plan design for plan participants.

MUST

An annual review of the employer's plan design is necessary. This step must not be skipped and to have the most impact, the review must address both compliance updates and cost containment issues.

COMPLIANCE

Over the course of 2021 the regulations created new baseline requirements and the plan provisions must be revised accordingly. This section is not intended to serve as a complete list, but to highlight significant compliance considerations for plan sponsors for the 2022 plan year.

On an annual basis, the US Department of Health and Human Services (HHS) adjusts the Affordable Care Act (ACA) in-network out of pocket maximum amounts. For plan years in 2022 these limitations apply for essential health benefits under non-grandfathered group health plans.

The maximum for self-only coverage is $8,700 and the maximum for coverage other than self-only is $17,400. Note that certain qualified high deductible health plans have different limits as well. An employer must review and adjust the benefits to ensure compliance with the 2022 federally allowed out of pocket maximums.

In addition to potential modifications to the plan's cost-sharing maximums, the employer must revise employee contributions if they do not coincide with the applicable ACA Employer Mandate affordability threshold for 2022. Pursuant to IRS Revenue Ruling Procedure 2021-36, for plan years beginning on or after January 1, 2022, employer sponsored self-only coverage may not exceed 9.61% of an employee's household income.

This is significant as it represents a decrease from the 9.83% affordability threshold in 2021. An employer, subject to the Employer Mandate, offering coverage greater than the 9.61% threshold could be subject to penalties. Plan sponsors should continue to monitor this, however, as pending regulations may further decrease the affordability threshold in the future.

During the 2020 and 2021 plan years regulators issued urgent relief to assist individuals and employers through the COVID-19 pandemic. Much of this temporary relief, however, has either since changed or expired. As a result, many of these optional and required compliance provisions must now be removed from plan materials.

For example, employers must address the following with respect to previously issued amendments:

1) Did the plan adopt any optional, temporary relief with respect to the Health Flexible Savings Account or Dependent Care Assistance Plan benefits? If so, have the changes been documented with the appropriate timeframes and expiration dates?

2) Did the plan adopt a COVID amendment to comply with the regulations? Was that COVID

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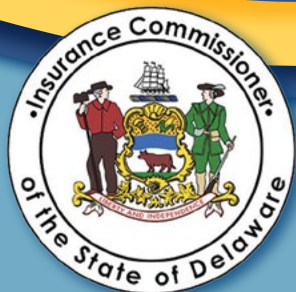

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amendment revised as the regulations edited the extended timelines? Note that the national emergency and public health emergency will likely continue for the foreseeable future.

3) Did the plan issue an amendment to address COBRA premium relief assistance under the American Rescue Plan Act of 2021? If so, did the language appropriately address the relevant timing and interaction between other regulations?

The Consolidated Appropriations Act of 2021 (CAA) mandates plan language changes as well for the 2022 plan year. The CAA enhanced existing mental health parity protections by mandating a written, documented comparative analysis to demonstrate compliance regarding the plan's non-quantitative treatment limitations (NQTLs).

Plan sponsors must have, readily available, relevant information to demonstrate the NQTLs within the plan design imposed upon mental health and substance use disorder benefits are in parity with those imposed upon medical and surgical benefits.

For example, plan sponsors must review the NQTLs specific to the requirements for medical and prescription pre-authorization, the reimbursement strategy for out of network claims, the medical management and medical necessity standards, and any provider definitions containing unique licensure requirements.

The CAA also contains expansive surprise medical billing protections. Pursuant to the No Surprises Act (NSA), plans will need to add and revise certain plan provisions to protect plan participants. NSA presents new terms such as certified IDR entity, qualifying payment amount and recognized amount which should be defined for plan participants. Further, the NSA expands the scope of emergency services and as a result the existing plan definition will require revision to ensure compliance.

The required NSA revisions created new protections for plan participants covered under a grandfathered health plan. Prior to the NSA, retaining grandfathered status would have exempted the plan from certain ACA requirements.

For example, only non-grandfathered plans were required to comply with the revised ACA appeals process and emergency service protections. Significantly, the NSA expands the scope of claims subject to external review to include adverse benefit determinations involving consideration of the plan's compliance with the NSA protections for both non-grandfathered and grandfathered plans. These expanded protections necessitate urgent plan revisions.

COST CONTAINMENT

With so many required compliance changes, the plan must not overlook implementation of cost containment strategies. Upon review of the available claims data the plan sponsor may identify exposures that can be mitigated by alternative benefits. Employers should consider whether any particular benefit revisions could create plan savings without decreasing available benefits.

For example, important questions should be discussed:

1) Did the plan encounter issues with any high-cost specialty drugs where a generic drug may have been appropriate?
2) Does the plan have a program to ensure participants are properly guided, when requested and appropriate, to alternative drugs?
3) Does the plan encourage or mandate second opinions for any procedures?
4) Does the plan offer compliant mental health and substance use disorder benefits that will ensure the necessary support for plan participants?

MAY

Beyond compliance and cost containment updates employers may wish to consult their employees regarding plan design. The health plan is an important employee benefit and may be used as a recruitment tool. By taking the employee benefit desires into consideration it may help assure the package remains attractive and available as a retention tool.

While this step should be balanced against the financial implications of such changes, it is an important part of the renewal discussions. Every employee suggestion may not be implemented, but the feedback may help the employer understand the benefits their employees value the most.

For example, are employees inquiring about Lasik eye surgery, massage benefits, acupuncture benefits or chiropractic benefits? Could the addition of these benefits not only improve employee morale but potentially offset the need for other more expensive benefits? Are employees asking about expanded categories of eligible dependents? Could the additional classification generate increased employee satisfaction?

Even if the employer does not intend to adopt a broader scope of benefits, listening to employee desires and needs can inspire conversations and a deeper understanding of the employer's plan benefit design.

SHOULD

After contemplating the compliance, cost containment and other benefit changes the employer should devise a detailed implementation plan. Not only will materials need to be revised to reflect the updated benefits, but the employer should have a plan for communicating this information to plan participants.

As multiple documents will need to be updated a thorough gap review of the various plan materials should be performed to ensure that a change to one document will not create a conflict within another. As the regulations for 2022 outline process related changes, the employer and administrator must review processes, systems, and work flows to ensure they are up to date.

Importantly, since many of these changes are new requirements, they might not be neatly outlined within existing agreements. As a result, the documents governing the plan's relationships should be reviewed to ensure the regulatory requirements are addressed and duties clearly outlined by the appropriate party.

NEXT STEPS

Plan year 2022 will present complexities for plan sponsors. To preempt these issues an employer must be prepared with the proper ingredients to make sure they have a recipe for success. The best preparation mandates an in-depth understanding of the regulatory requirements, strategies tailored to the plan population, and an action plan for implementation. This year will be crucial for plans to coordinate, collaborate, and communicate with relevant plan stakeholders to ensure the upcoming plan year will be a positive one. ■

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