Written By Jack Towarnicky

Dear Editor:

I read with interest Bruce Shutan's recent, excellent article "Healthcare Priced Right?" I offer the following perspectives in response and believe it is well past time for plan sponsors to consider or re-consider Reference Based Pricing (RBP).

ERISA §408(b)(2) now applies to health plans and, no surprise (pun intended), the plaintiff's bar noticed. The initial fights are focused on cost. One suit uses an interesting, more comprehensive definition of cost that befits health coverage within a total rewards context. Plaintiffs argue it isn't only higher out-of-pocket expense or higher cost sharing, such as contributions and deductibles. The complaint also alleges that higher costs reduced wages (a "crowd-out" effect)!

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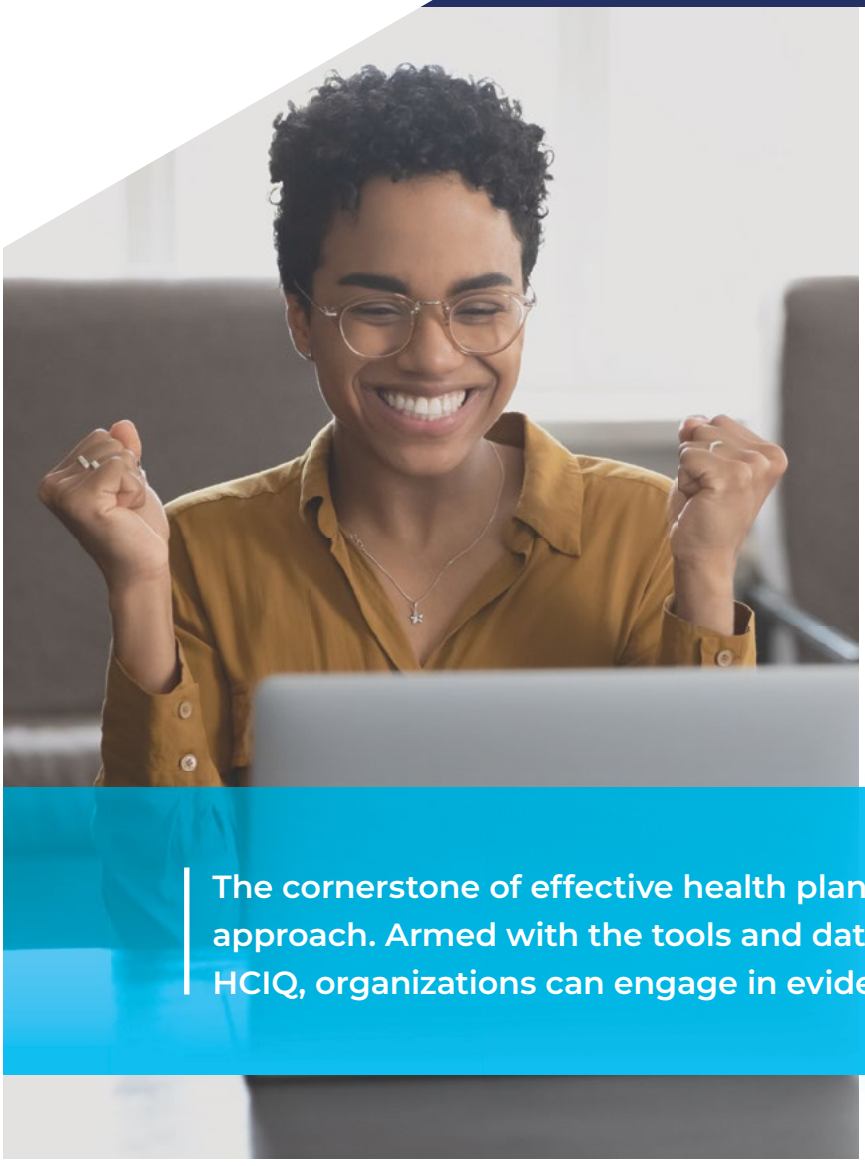

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ERISA requires plans pay only "reasonable" expenses. But, ERISA doesn't define "reasonable" as lowest cost. Regardless of who prevails in current litigation, when a plan administrator selects a network or foregoes interventions like RBP, there is now an added exposure from participants who believe fiduciary duties should include pursuing the lowest cost each provider will accept for each service provided.

Network/Direct contract negotiation has not achieved the lowest possible cost. Participants frequently blame benefits staff when their doctor won't accept network pricing or when a provider group or hospital threatens to leave the network over reimbursement rates -- especially when participants receive letters asserting networks aren't negotiating in good faith.

Most networks cave in order to maintain a broad network, and many networks can be compared to rivers that are a mile wide, with discounts that are an inch deep.

Clearly, network providers won't agree to reimbursement rates comparable to those they accept for Medicare and Medicaid beneficiaries.

Studies show self-insured employer sponsored plans pay the most for the same services – followed, in order, by insured employer-sponsored plans, Medicare, Veterans Administration and Medicaid. Rand and other studies confirm employer sponsored plans reimbursements are 220+% of Medicare allowables and 300+% of Medicaid allowables.

The questions remain: Why must participants in employer-sponsored plans pay more? Why should the cost for the same service be double for individuals who are over age 65 just because they continued participation in an employer-sponsored plan? Why shouldn't the plan sponsor/plan administrator seek, in both settlor and plan administrator/fiduciary roles, to identify and obtain the best deal possible?

Achieving the lowest attainable price is possible through Reference Based Pricing "done right" – where negotiation starts by leveraging knowledge of what providers accept for others, coupled with deploying the very best negotiation/participant representation tactics.

Sincerely,

Jack Towarnicky,
ERISA Counsel
and member of
Aequum