CHAPTER 15

INDEPENDENT CLAIMS ADMINISTRATORS VS. INSURANCE CARRIER OWNED CLAIMS ADMINISTRATORS – THE TRADE-OFFS

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"The most difficult thing is to recognize that sometimes we too are blinded by our own incentives. Because we don't see how our conflicts of interest work on us." – Dan Ariely

An increasing number of employers are looking to self-insure their employee health benefits for the first time. While this is a great first step toward better benefits and lower costs, it's important to realize that not all self-insuring is the same. It can vary enormously, depending upon whether you decide to work with an insurance carrier providing administrative services only (ASO) or an independent third-party administrator (TPA).

A self-insured health plan is established when an employer sets aside some of its funds to pay for employees' medical expenses. Employees then contribute to the plan rather than pay traditional premiums. How does this differ from "insurance" as

most people know it? With fully-funded "traditional" insurance, your organization pays premiums to an insurance carrier and the carrier accepts the risk, meaning the carrier pays all medical bills with its own funds. If the premiums exceed the medical expenses, the carrier "wins." If the medical expenses exceed the premiums, the carrier "loses." But for employers that can afford the risk—that have access to sufficient funds to pay the foreseeable medical expenses incurred by plan participants, as well as the occasional midsized to large dollar claim—self-insuring has been shown to be less costly overall.

A self-insured employer enjoys the following benefits:

- Plan Control — Choose what to cover and exclude, customizing the plan to be generous where your particular membership needs it, and stingy where it doesn't.
- Interest and Cash Flow — Funds are in the employer's hands until they're needed, meaning interest on those assets belongs to the employer.
- Federal Preemption and Lower Taxes — The Employee Retirement Income Security Act of 1974 states that a private, self-insured health plan is administered in accordance with its terms and federal rules. So, these plans aren't subject to conflicting state health insurance regulations or benefit mandates.
- Data — Employers can examine the claims data, study trends, allocate resources and form partnerships to address their needs.
- Risk Reduction — Reducing risk and costs directly impacts the employer and employees. Risk posed by other populations doesn't impact the plan — so employees have lower single and family premiums than those with fully funded insurance.

Overall, a self-insured plan sees net savings over a three- to five-year span, compared to a similar fully funded insurance policy.

Yet, there are risks. Among them: difficulty handling complicated claims, the threat of catastrophic claims, inability to fund claims, and new fiduciary responsibilities to members of the plan.

As mentioned, when an organization self-insures its health plan, it uses its own money plus employee contributions to pay

claims for medical services. But rarely does such an organization have the resources or know-how necessary to process claims—to receive, interpret, and pay medical bills. Nor does it understand the intricacies involved in creating and managing a health plan while complying with applicable laws. Thus, an ASO or TPA is required to process and pay claims with the self-insured plan sponsor's money.

Second, while most self-insured plans have adequate resources to pay most everyday medical expenses, few have enough in hand to cover the cost of catastrophic claims resulting from care of patients with cancer, hemophilia, premature birth, etc. To address this, a self-insured plan will purchase a form of financial reinsurance or excess coverage from a stop-loss carrier. This is not health insurance in the traditional sense. The stop-loss carrier does not pay medical bills or deal directly with providers of health care. Instead, the self-insured plan—the employer—pays the medical bills. But once you have paid a certain amount (referred to as the specific deductible, attachment point, or "spec"), you can seek reimbursement from the stop-loss carrier for every dollar the plan subsequently spends beyond that "spec" deductible.

Finally, a self-insured employer acts as — or appoints — a plan administrator, who is a "fiduciary" of the plan and its members. Law dictates the fiduciary must act prudently, protect the plan and apply its terms judiciously. Failure to comply with these terms, mismanaging plan assets or doing something not in the plan's best interest could expose the plan sponsor to claims of fiduciary breach — and steep penalties. Fortunately, third-party organizations exist to step in, aid in decision-making and act as a fiduciary — indemnifying the self-insured plan administrator.

Now, let's review how a potential "self-insured" employer decides who will help them on this journey…

Note: at various times in this discussion, we will refer to the employer as the *plan sponsor* or the *client*. Employees are also called *plan members*, while members and their plan-eligible dependents are collectively called "participants."

ASO and TPA at a Glance

The traditional and simplest way to administer a self-insured plan calls for a large insurance carrier to shed its risk-bearing role but continue to serve as the employer's claims processor, substituting the employer's money for its own. This is an administrative services only or "ASO" arrangement.

ASOs prefer to pick and hire the stop-loss themselves and provide a predetermined health plan that aligns with its own stop-loss and preferred provider only (PPO) network agreements. This bundling of the plan document, stop-loss insurance, and network agreements severely limits plan customization. On the other hand, it eliminates potential gaps in coverage between these components, and makes for a relatively peaceful experience.

The transition from a fully-insured health plan to a self-insured plan is easier with an ASO, because the insurer:

- Can continue to provide the same administration expertise it provided before, including the actuarial evaluation of how much money it will cost the employer to fund its own program;
- Can provide other professional services such as accounting, legal advice, expert medical opinions, and regulatory compliance;
- Is usually familiar with the medical providers known to the employees and with employees' health risks, both important to handling claims; and, as mentioned…
- Ensures the plan, stop-loss, and network all abide by the same terms.

The downside is that the employer can't take as much of an active role in cost management or provider relations. Nor can it easily negotiate a direct contract with a hospital or "carve out" a particular type of claim. In return for one-stop shopping, you generally do what the ASO dictates, limiting your flexibility to significantly reduce spending.

With a TPA, on the other hand, you call the shots and get more transparency and flexibility for what is generally a lower cost. The TPA does what you dictate.

As benefit plans have become more sophisticated and self-insuring more popular, we've seen a nationwide proliferation of increasingly professional TPAs. These independent administrators offer a broad range of services. At one end is the simple administration of benefit payments. At the other is a "turn-key" contract that includes a stop-loss provision like an ASO but is still more flexible and affordable.

Due to consolidation, there are fewer small "boutique" TPAs these days, but even the larger TPAs dominating the market still maintain more of a customized approach than an ASO. They are more flexible, more likely to be local, and offer employers the opportunity to access claims data. They also let you pick and choose vendors and providers to meet your specific usage needs. Thanks to their highly specialized products and lower overhead, TPAs have developed pricing strategies that make them cost-effective. A TPA can afford medical expertise and achieve group purchasing discounts that are significantly more advantageous than those available to a single employer. More employers are finding that it's worth risking potential gaps in coverage with a TPA, in exchange for being able to shop around and field offers from various stop-loss carriers.

Also, ASOs are generally proprietary regarding claims data. If you as the employer want to know if your smoking cessation program has yielded an ROI, it can be hard to get the data needed to see the changes. If you want to examine your costs for diabetes treatment before deciding on a program for Type 2 diabetics, it can be hard to get data. With a TPA, you have complete access to the data, allowing you to design your plan accordingly. Increasingly, employers believe it's unconscionable to not have visibility into what is likely their organization's biggest expenditure after payroll.

Here's another difference. Many self-insured plans place great emphasis on their preferred provider organization (PPO). (See Chapter 8 PPO for more on PPOs and how they are responsible for

keeping health costs so high.) This is a prearranged network of providers that agree to treat plan members for a discounted rate and to accept that amount as payment in full. The biggest networks are owned and managed by large insurance carriers, but nevertheless provide access to their own insurance programs and ASO plans. On the other hand, even when TPAs "rent" networks from large carriers, the carriers do not provide their deepest discounts to anyone outside their own organization.

Thus, some TPAs are forgoing the national network approach, instead focusing on direct contracting with individual providers for even better rates and/or forming high quality networks of select providers for rates that rival or beat the best national PPOs. The downside, of course, is that if plan members go outside the high-quality network for treatment, they can be billed out of pocket for the balance after the plan pays the maximum amount allowable according to the contract—something that doesn't happen if the plan and provider are part of a national PPO.

With a TPA, there is a true unbundling of services. For some employers, the fact that a TPA requires the employer to see and select the moving parts is exciting. It allows a hands-on employer to more actively contain costs and pick what they feel is best for their employees. For others, it is frightening and overwhelming. For those employers, an ASO that makes the decisions for them is likely the way to go—if they're willing to pay the premium.

ASO Benefits

There are a lot of parts to administering a benefits plan and an ASO will take care of all of them;

- Accounting and recordkeeping
- Plan design
- Actuarial analysis
- Underwriting
- Securing stop-loss coverage
- Investment advice

- Enrollment
- Utilization review
- Medical record audits
- Plan booklet preparation
- COBRA administration
- Plan communication
- Reporting and disclosure
- Contribution determination
- Claims administration
- Statistical analysis
- Subrogation
- Claim appeals
- Record retention

The ASO will also decide whether, when, and how much to pay for claims.

Of late, insurance carriers, including their ASO arms, have improved their service capabilities, making them more transparent. In some cases, it is possible for a self-insured employer to log onto an ASO's technology platform and instantly receive claims status reports—for an extra cost, mind you.

As self-insuring has become more important in the market, some insurance carriers also have implemented programs to make their products easier to use. This revolution in customer service includes onsite processing personnel, 800 numbers, artificial intelligence systems, image processing, and other advanced technology designed to generate one-call responses to member inquiries.

Self-insuring with an ASO is truly a turn-key solution. You and your employees enjoy a seamless transition from fully-insured traditional insurance. There are no gaps between the plan's coverage and stop-loss coverage. Yet there is a cost for this all-in-one approach. In addition to administrative fees that admittedly range but almost always exceed the fees charged by TPAs (sometimes doubling them), your rights to examine data and customize your plan, as well as pick and choose stop-loss carriers

and vendors, is limited, and stop-loss insurance premiums are usually greater. This arrangement, together with bundled pharmacy services, significantly limits your ability to proactively and significantly reduce your total spending.

TPA Benefits

Different types of TPAs have different strengths. On large accounts, for example, the large nationwide TPAs can compete favorably with large insurers' ASO-driven products. Smaller, local TPAs can generally respond more quickly to plan changes than their larger counterparts.

Interacting and working with a TPA on a local level can bring a high degree of control to the administrative process. A TPA located in the same community as an employer has the advantages of knowing the market, employees, providers, and general economic conditions. This familiarity can lead to administrative and benefits efficiencies. If the TPA is part of a local managed care organization, serving other employers, it has a stronger negotiating position.

A thorough knowledge and understanding of the labor market and the benefits available locally for various employee classifications will also help in planning benefits. This means the TPA will be competitive and likely to achieve the goals of the employers' overall benefit strategy.

Two other advantages that TPAs have over ASOs are negotiating "in network" claims and changing terms in the summary plan description (SPD). Because many ASOs are affiliated with the PPO network they use (often sharing a parent company or other affiliation), they are typically expected to process all in-network claims quickly—without examining them. While quick and painless claims payments certainly limit conflicts with providers and insured individuals, they also make it more likely that excessive charges, duplicate and fraudulent claims, and other billing errors will be missed.

Recently, a TPA processing claims for its self-insured plan client performed an audit on in-network claims (something an

ASO might not be allowed to do) and discovered a $3.6 million claim *after* the network discount. The claim featured many coding and other mistakes, but once these were addressed, the final payment was a much more manageable $1.6 million!

Whether because the claims processing system is keyed to work with a particular benefit plan template, or because applicable network and stop-loss policies are written in concert with the plan document, many ASO-managed plans are stuck with a predetermined SPD document. For many self-insured employers, this is a great comfort. For others, the lack of discretionary authority is troublesome. In one case, an employer working with an ASO was strongly opposed to paying for claims arising from all illegal acts. The plan document excluded only claims arising from felonies. When the employer asked to expand the scope to all illegal acts, he was told that such a change would disrupt coordination with the claims system, stop-loss, and network contracts.

As cost containment and managed care become increasingly important, the balance is tipping toward the TPAalternative.

Another Consideration: Are You Hiring an Independent Advocate?

Whether ASO or TPA, some claims processors are partly owned by large insurance carriers, health systems, network administrators, and other entities. This means that when you want to dispute something with one of those entities, their claims processor may need to bow out due to conflict of interest. In one instance, a small employer's plan members were being asked by a local hospital to pay a portion of their bill *upfront* because the plan didn't use a recognized provider network. The hospital was not hassling members of other, much larger area employer plans administered by the same TPA and likewise not using a network. The TPA confronted the hospital on the plan's behalf, leveraging the weight of all of its clients to force the hospital to explain the issues and

devise a better solution. Had the TPA been beholden to the hospital, this wouldn't have happened.

In another instance, the employer sponsoring a self-insured plan was questioning a hospital's billing practices. When it refused to pay the full billed charges, the hospital returned the plan's partial payment, threatening to "balance bill" the individual directly for 100 percent of the billed charges.

Had the plan been working with a TPA or ASO that was affiliated with the hospital, it almost certainly would have pushed the employer to reissue payment in accordance with the network terms. But because the TPA was entirely independent, it agreed to issue the plan's maximum allowable payment directly to the individual. In addition, it hired an advocate to represent the individual in negotiating with the hospital. By taking these steps, the individual, employer, and TPA were able to get the provider to abandon a two percent discount in favor of a 35 percent discount, saving almost $30,000.

A Closer Look at Fiduciary Responsibility

One benefit inherent in an ASO approach relates to fiduciary duties. A self-insured employer, unlike an employer purchasing a fully-insured health plan, is deemed to be a fiduciary of the plan members. This means he or she is legally bound to act prudently and only in their interest. Actions that are deemed to be in error, arbitrary, or capricious can expose employers to treble damages, that is, penalties are sometimes equal to three times the damage caused. For many employers, who have never taken on a fiduciary role, this is intimidating and not welcome. Often, an ASO is willing to take on that role with you.

With TPAs, things are less straightforward. A TPA is a contract service provider, not a plan administrator. The administrator role is reserved for the employer or trustee-appointed fiduciary. However, TPAs increasingly are taking on plan administrator functions—and with them, apparently, increased liability.

For example, TPAs are promoting programs such as Multiple Employer Welfare Arrangements or "MEWAs," which are statutorily regulated plans comprised of multiple smaller employers banding together, moving into marketing, stop-loss procurement, and consulting services. In response, TPAs are coming under scrutiny for their handling of plan funds and invested assets. Courts already have found some traditional claims administration functions to be of a fiduciary nature—particularly regarding handling and management of plan assets—and have held TPAs accountable as functional fiduciaries under the higher standards of conduct. Some states have attempted to regulate TPA services as a form of insurance business. However, a number of courts have held that state regulation of TPAs—and of self-insured plans—is preempted by ERISA (the Employee Retirement Income Security Act of 1974).

Even if you hand over fiduciary duties to a TPA or ASO, ERISA says you may remain liable for its breach of its duties *if*, say, there are no procedures in the plan to delegate those duties. But if there are procedures and you follow them, you will be held responsible for the TPA's misconduct *only if you failed to exercise prudence in selecting the TPA or monitoring their performance*.

Naturally, you will want to consult an attorney in this matter.

Empowered Plans

One often overlooked, but certainly underappreciated aspect of self-insuring is the sense of ownership the employer and employees should have over their program. Indeed, when we pay "premiums" to a carrier, and shift the risk inherent in claims payment onto that carrier, we don't really think twice about how much this MRI or that vaccine costs. In fact, like some-

one at the all-you-can-eat buffet who skips past the veggies and eats nothing but lobster tail, we want to get all we can get for our money. Our premiums are already set in stone, so let's stick it to the carrier by spending as much as possible on our care. With a self-insured plan, however, a dollar saved is a dollar earned by the employer and employees.

Not every self-insured employer truly takes this to heart, however, and fails to educate their staff regarding how their actions and inaction can impact how much they all spend on care. An empowered plan, however, will take steps to do just that. Consider a plan that – on its own – identifies the hospitals in its area, and (by examining the data) determines which generally charge more than the others to deliver a baby. Next, they take the reasonably priced facilities and research the quality outcomes published annually, to identify which are the safest as well as best priced.

With those two metrics in hand, this empowered plan has identified "centers of excellence," and notifies its staff that if a woman on the plan chooses to deliver their baby at one of these select facilities, the employer will pay for the baby's diapers and wipes for a year. That is a win-win scenario for both the participant and the plan.

Looking back on the issues discussed, we see how the use of an ASO versus a TPA can impact a plan's ability to achieve "empowered" status. The employer had to examine the data (recall we discussed how an ASO may be more protective of the data than a TPA), and the employer may potentially be incentivizing staff to visit one "in-network" provider over another… something the PPO (and thus the ASO carrier) may not be thrilled with.

This is just one example of how a hands-on self-insured plan can take cost containment to the next level, and how the decision of whom to work with, as it relates to plan administration, will impact those efforts.

Ready to Get Started? A Checklist for Decision Makers

Here are some reasons you might decide to self-insure.

1. **Plan control.** You choose what to cover and exclude. With a TPA, you are able to directly control costs by designing and implementing care strategies that are informed by your culture, employee behaviors, and local health and provider resources.
2. **Interest and cash flow.** Funds are in your hands until they're needed.
3. **Federal preemption and lower taxes.** ERISA states that a private, self-insured health plan isn't subject to conflicting state health insurance regulations.
4. **Data access.** You can, if you have a TPA, examine claims data, study trends, allocate resources, and form partnerships to address your company's unique needs.
5. **Risk reduction.** Reducing risk and costs directly impacts you and your employees, plus you're unaffected by other populations.

On the other hand, you and your employees may be used to a fully-insured traditional insurance policy, with all that implies: "in-network" access to providers, often nationwide; knowing those providers will accept whatever the plan dictates in terms of charges; and predetermined decisions about what is covered and what is not, and how a complicated claim should be handled.

How important are these things to you?

Take some time to consider the following before making your decision to self-insure and picking either a TPA or an ASO.

- Do you want to make the effort to compare your plan document, which you helped draft, to a stop-loss carrier's policy to be sure you won't be stuck paying certain types of claims the carrier doesn't cover? Or, would you rather some-one else

handle drafting the plan and picking stop-loss?
- Do you care whether you have a nationwide network, or do you prefer local narrow networks and direct contracts, which might save you more money but expose your employees to the possibility of balance billing?
- Do you care who services your plan—who's watching the claims and who's making sure your plan is being reimbursed when someone else is supposed to pay?
- Do you care whether you're paying for services and programs your employees don't actually need or use? Are you concerned that your population has needs not being adequately addressed?
- Do you want to implement the most innovative, evidence-based practices to improve employee health and reduce waste and costs?

If you place more importance on large network discounts (albeit off of undisclosed and inflated prices and over which there are no controls), and avoiding decision making (and liability for those decisions), then you are an ideal candidate to self-insure with an ASO.

If you are willing to risk potential gaps in coverage between your plan and your stop-loss and assume liability for decision making as a fiduciary, in exchange for controlling which providers your employees have access to, what your plan covers, and which programs, vendors, and carriers you work with, then you are a prime candidate for self-insuring with a TPA.

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What to look for in a TPA

Is the TPA able to deliver value? This can be in the following forms.

- Value-based contracting
- Integration with local primary care practices
- Chronic care management and reporting
- Cost and quality transparency
- Seamless integration and promotion of third-party solutions like telehealth or second opinions
- Flexibility in customer communication (phone only between 8am and 5pm? Or text, email, chat anytime?)

Will the TPA be able to smoothly accommodate you as a new client? One clue is the size of your company relative to the TPA's other clients.

What is the TPA's performance track record on things like turn-around time for claims processing (seven to 10 business days is average) and accuracy (look for a percentage in the upper 90s)? Reputation in the stop-loss market is a good indicator.

What do their turnover rate, past performance evaluations, reference checks, feedback from dissatisfied clients, and pending litigation tell you about the performance of individual staff who will administer your program?

Is the TPA's technology sophisticated enough to account for and appropriately allocate the cost of benefits, provide a superior customer experience, and evaluate both the cost of the various benefits being offered and the efficiencies of providers? (In many cases, the answer is no.)

Does the TPA have a strong relationship with a stop-loss carrier that might help sway excess coverage reimbursements in your favor?

Is the TPA able to meet the competing demands of federal privacy rules and Department of Labor claims procedures rules that accelerate the decision-making process? Can it meet HIPAA's standardization requirements for electronic codes and formats?

Is the TPA prepared in terms of technological capabilities and capital resources to operate in the ever-more demanding compliance environment?

Key Take-aways

- Carrier-control claims administration, for a self-insured employer, operate nearly identically to a traditional insurance program. That is an advantage and disadvantage.
- Carrier-provided claims administration severely impair your ability to maintain cost control and prevent employees from going to provider organizations with poor value and safety records.
- Independently administered benefits plans are more work. However, they offer a limitless ability to ensure that plan beneficiaries receive the greatest value and patient safety. Employers spending 20 percent less (or ever deeper savings) per capita, while providing superior benefits, all use independent administrators.