

Health Care Industry-Specific

The reader consider certain current industry activities as being potentially damaging to employer-sponsored health care plans in general and to self-funded health plans in particular.

1. The activities are two in number:
 - Chaotic, if not discriminatory, hospital billing methods
 - Bundling of certain vendor services.
2. The potential damages are these:
 - Plan sponsors will use such activities as one more reason to drop their plans.
 - Governments will use such activities as one more reason to intrude; especially of concern is the increasing possibility of a single-payer scheme.

Both of the activities above-cited have the potential of being deemed an unfair trade practice which includes either or both of the following:

- Unfair methods of competition (narrow)
- Unfair acts or deceptive practices (broad).

Two thoughts of interest are these:

- Such activities may violate all manner of statutory law and/or common-law without being ERISA infractions; these infractions involve civil penalties only.
- Such activities may be unfair trade acts and also restraint of trade infractions; the latter infractions may involve criminal penalties as well as civil penalties.

All of us whose lives are touched in some way by health care plans should respond to these words of warning as follows:

1. See that the potential for any activity being questioned is eliminated. To that end:
 - Transparent hospital *sticker prices* should be available, hospital rating should be state-regulated because of the oligopolistic nature of the industry and a new consent to treatment agreement should be adopted as soon as possible.
 - Bundling of vendor services should be used cautiously and with an abundance of consumer-alerts because of the pervasive and inherent conflicted interest problems.
2. A new audit, called a *special-purpose* audit should be made available which will ascertain whether or not any plan-related activity is potentially an illegal act (i.e., unfair method of competition or unfair act or deceptive practice).