CHAPTER 7

New Self-Funded Benefits

INTRODUCTION

By new benefits, we mean those that either (a) are not commonly self-funded (death or long term disability e.g.), or (b) are commonly self-funded but with a significant plan sponsor contribution (dental or vision, e.g.).

Such benefits are treated separately between (a) Group A (careful underwriting and requiring stop-loss) and (b) Group B (less careful underwriting and not requiring stop-loss.

Group A Benefits
- Death and AD & D
- Long Term Disability
- Long Term Care
- Critical Illness

Group B Benefits
- Medicare Supplement
- HRA
- Traditional
  - Dental
  - Vision
  - Hearing
  - Short Term Disability
  - Rx
  - Legal.

This Chapter discusses the following aspects of these new self-funded benefits:
- Motivations
- Benefits Described (Group A and Group B)
- Administration
- Work-Products.

MOTIVATIONS

The motivations for expanding the role of self-funding as described in this chapter are as follows:

Traditional Self-Funding Advantages

The text *Self-Funding of Health Care Benefits* adequately sets forth the advantages of self-funded v. fully insured plan. These advantages apply to the benefits described herein.

Additional Advantages

These new self-funded benefits are focused on overcoming some additional disadvantages to fully insured plans not set forth in the *Self-funding* text.

Long Term Disability

The fully insured long term disability plans appear, from the analysis that this writer has made to be unduly *marred* with excessive litigation. This writer asserts that such plans are overly-litigious.

Excess Profit or Expense Margins

This writer asserts that some of the benefits (particularly Death and AD&D) carry either excessive profit or expense margins or both.

Supplemental Coverage

Those benefits that are provided by a plan that is (a) participant-pay-all-and (b) employer sponsored and administered carry the burden of being unclear as to legal status. Does or does not such plan claim the privileges and obligation of ERISA? The writer asserts that such plans should be (a) clearly offered as an ERISA plan, (b) with an employer contribution (even if very small) and (c) protected by reimbursement stop-loss where stop-loss is needed.

Post-Health Care Reform

Each of the above-cited benefits has the enormous advantage of being a *survivor* after often the health care reform changes are in place

GROUP A BENEFITS DESCRIBED

In General

The Group A Benefits that require careful underwriting and stop-loss include (a) death and AD&D, (b) long term disability (c) long term care and (d) critical illness.

Long Term Disability

Benefits Described

Group long term disability (LTD) coverage, as we now find it, gained impetus in the late nineteen-eighties where more than a few insurers aggressively sought to write this coverage in large volume. There are two types of LTD: (a) business overhead which covers the ongoing business overhead expense and which continues after the disability of person and (b) salary continuation which replaces the lost income of the covered person.

Advantages and Disadvantages of LTD

Advantages

The usual advantages found with medical self-funding are also applicable to LTD:

- Reduced expenses (premium taxes, risk charges, etc.)
- Increased benefit design flexibility
- Avoidance of state-mandated provisions or benefits
- Improved cash flow.

In addition, the self-funded LTD plan, particularly if governed by a trust, will have an enormously improved chance of prevailing in claims litigation. This is because of the conflicted-interest difficulty with insurer-involved funding (be it fully insured or ASO-administered).

Disadvantages

The primary disadvantage of self-funding LTD is that the upside risk is greater than many employers wish to assume, stop-loss notwithstanding. The uncertainty of available administrative services (typically TPA-provided) and the volatility of the stop-loss market are sobering thoughts to some employers. Then too, the additional efforts and expense in funding and reserving the benefits that should be funded with a trust may be viewed by some employers as a negative.

Use of a Qualified Trust

The great majority of self-funded LTD plans should use a non-qualified trust because the primary advantage of the qualified trust gaining tax-exempt investment gains fails to offset the primary disadvantage of the qualified trust which is the added time, expense, regulatory burdens, etc.

Death and AD&D

Tax Issues Resolved

IRS has taken the position that self-funded death benefits will have the tax advantages of a fully insured plan if the funding vehicle is an IRC §501(c)(9) trust.

The logic of the IRS was as follows:

1. Plan is subject to ERISA.
2. Such insurance has to be in the form of an insurer-issued document
3. There must be a trust that functions as an insurer.

Dismemberment Benefits

Logic that applies to death benefits usually extends to dismemberment (or loss of eyesight or limbs).

Long Term Care

Benefits Described

The typical long term care benefit plan provides limited benefit payments for either a (a) nursing home or (b) nursing home and assisted living care. It is ideally suited to those persons with large assets who wish such assets to be protected against end-of-life care costs. The potential buyer is willing to give up the *pricey* premiums to be sure such buyer's estate remains intact.

Many nursing home residents are financially indigent and whose nursing home costs are paid by Medicaid.

Critical Illness

Benefits Described

A critical illness benefit is one where the health care plan pays a lump sum cash payment if the covered person is diagnosed with one of the critical illnesses listed in the plan document.

The plan may also be structured to pay out regular income or the payment be on behalf of the covered person undergoing a surgical procedure; for example, having a heart bypass operation.

The plan may require the covered person to survive a minimum number of days *the survival period* used varies from plan to plan however, 28 days and 30 days are the most common survival periods used.

The plan contains specific rules that define when a diagnosis of a critical illness is considered valid. It may state that the diagnosis need be made by a physician who specializes in that illness or condition, or it may name specific tests: e.g. EKG changes of a myocardial infarction, that confirm the diagnosis.

Medical conditions typically covered include the following:

- Heart attack
- Cancer
- Stroke
- By-pass surgery
- Alzheimer's disease
- Blindness
- Deafness
- Kidney failure
- A major organ transplant
- Multiple sclerosis
- HIV/AIDS contracted by blood transfusion or during an operation
- Parkinson's disease
- Paralysis of limb
- Terminal illness

Organ Transplant Coverage

A major variation, occasionally seen is to have some of the benefits in the critical illness menu are often offered separately. Two examples are cited:

- Dread Disease (selected diseases only)
- Transplantation (major organ only).

GROUP B BENEFITS DESCRIBED

In General

The Group B Benefits do not require the most careful underwriting nor stop-loss and include: (a) Medicare Supplement, (b) HRA, (c) Legal and (d) Standard Benefits.

Medicare Supplement

Benefits Described

Medicare supplement benefit coverage (Medigap) fills gaps between Medicare benefits and what a covered person must pay out-of-pocket for such things as deductibles and co-payments. A deductible is the amount a covered person must pay each year for covered medical expenses before Medicare or Medigap insurance begins to pay benefits. Both Medicare Part A and Part B have deductibles. A co-payment is the portion of a charge for a covered medical service that such covered person must pay. Medigap policies only pay for services that Medicare deems medically necessary. In addition, most Medigap payments are generally based on the Medicare-approved charge.

Federal law and state rules limit insurance companies to 10 standardized packages of Medigap benefits. These packages are labeled "A" through "J" and each company must use these same identifying letters. All companies that sell Medigap insurance must offer plan A, but do not have to offer the other nine plans.

Health Reimbursement Accounts

Benefits Described

A health Reimbursement Account results from a is a plan that is fully funded by the employer and that allows such employer to reimburse medical expenses paid by participating employees, thus yielding tax advantages to offset health care costs. Typically, such plans are employer-sponsored and employer-funded and serviced by a third-party administrator or plan service provider. The employer may provide in the HRA plan document that credit balances in an employee's HRA account can be rolled over from year to year like a savings account. The employer decides if the funds are rolled from year to year and how much rolls over (which can be either a flat amount or a percentage).

Legal

Benefits Described

A legal benefit plan establishes a fund from which are paid to eligible covered persons these benefits: advice and consultation; drawing of wills or other legal documents; adoption proceedings; representation in civil and criminal actions; representation in traffic offenses; domestic relations problems; real estate transactions; consumer complaints; landlord-tenant actions; estate planning; bankruptcy, probate and administration of estates; immigrations; and living trusts.

Plan Administration

Such plan is typically self-funded and TPA-administered. The duties provided thereby included the following: (a) law firm or firms are selected, (b) trust (qualified or otherwise) is established, (c) legal services properly provided are plan-paid benefits, (d) plan sponsor contributions are collected and accounted for and (e) legal services are monitored. Critical to the plan is the plan document.

Standard Benefits

Benefits Described

There are more than a few benefits, regularly found in the typical self-funded plan document that may be offered (a) alone or (b) in combination with others. Examples include

- Dental
- Vision
- Hearing
- Rx
- Short Term Disability.

ADMINISTRATION

Duties and Responsibilities

These are divided as follows:

1. **TPA Exclusively**
   Claims administration, invoicing, money-handling, stop-loss reporting; e.g.
2. **Shared**
   The TPA, consultant, broker, risk manager and plan sponsor will perform these functions as maybe agreed upon: shopping stop-loss, consulting, advising, delivering, government fillings and document management.

Whoever may have the duty and/or responsibility, the use of any of the work-products described herein is available to them.

WORK-PRODUCTS

Overview

A menu of work-products is available to the user, on behalf of each benefit. The data and documentation for such work-products is available from the Employer Database which is, in itself, a work-products classified as an Administrative Special Purpose Work-Product.

Examples

These are examples of such work-products.

1. Underwriting and Rating Proposal
   a. Initial

b. Renewal
2. Plan Document
3. Claims Analysis
4. Financial Report