

9

Pitfalls That Destroy Plans

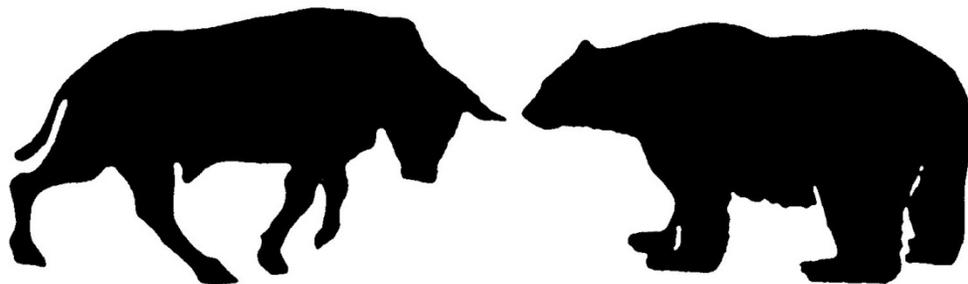
CrawfordAdvisors, LLC

[SELF-FUNDING HEALTH BENEFITS]

A treatise prepared for executive management. Details the impacts of self-funding employee provided health benefits.

[Overview]

Historically, the option to self-fund employer sponsored health benefits has been reserved for the largest of corporations – those with the capital reserves to hedge the increased exposure. The cash flow advantages and potential savings have been primary attractants to deciding to self-fund all or a part of the claims risk.



Over the past decade, self-funding has become the dominant financing method for health care plans for a number of reasons:

- Cash flow advantages (general asset funding).
- Cost savings (no premium taxes, insurer risk charges).
- Plan control (employer is better able to control plan and its costs).
- Plan design flexibility (avoidance of state-mandated benefits).

So long as employers are expected to be the primary source of financing, the dominance of self-funding in the future may be expected. Comparing a self-funded plan to an owned plan and a fully insured plan to a rented plan, one may easily grasp the simplicity of self-funding and how it contrasts to a fully insured plan. There are disadvantages of self-funding, however, as not all people want the responsibility of plan ownership.

HOWEVER WITH THE POSSIBILITY OF GREATER CONTROL AND INCREASED SAVINGS, COMES A HEIGHTENED RISK OF EXPOSURE AND LIABILITY.

HERE ARE THE 9 PITFALLS TO AVOID...

PITFALL # 1: [Risk Management]

Basic risk theory underlies the employer's decision to self-fund. Critical to self-funding is the need to have the terms of stop-loss within the employer's comfort level. Other risk management considerations involve:

- a. management attitudes,
- b. inherent nature of employer's risks,
- c. employer's financial condition,
- d. maintenance of reserves,
- e. administration,
- f. employee or union relations,
- g. acquisitions/mergers, and
- h. funding.

The general attitude that small plans are necessarily not candidates for self-funding is simply not correct; generally any plan in excess of 50 participants sponsored by a stable and well-managed employer is a self-funding candidate.

Understand your risk profile and make that your number 1 consideration when determining whether some form of self-funding is right for you. A feasibility study is the usual basis upon which the employer bases its go or no-go decision to self-fund.

PITFALL # 2: [Legal]

Almost without exception, court decisions which affect health care plans have either clarified, or made more secure, self-funding as the preferred financing method for health care plans.

Evaluate the legal ramifications of financing healthcare within your organization. Rely on the advice of a trusted attorney versed in the nuances of healthcare planning.

PITFALL # 3: [State Regulation]

Self-insured employers have a keen interest in state regulatory activities because of:

- mandated benefits,
- state registration and/or regulation of vendors,
- ERISA preemption being not global,
- ebb-flow of state-federal power,
- considerable number of non-ERISA self-funded plans,
- MEWA's and
- role of 24-hour coverage.

We know that states have enacted many statutes, most of which are NAIC-promulgated models. We also know that considerable legislation has dealt with vendor state licenses. We are seeing increasing activities at the federal level to tinker with ERISA, along with substantial pressure by the NAIC, and others, to amend ERISA.

Understand the geography of your employee population.

PITFALL # 4: [Taxes]

For the most part, the applicability of taxes to fully insured and self-funded plans are the same. Examples include IRC §§ 104,105, 106,162,213,4976, and 5000. However, there are areas in which self-funded employers do face distinctions:

- Self-funded death benefits. IRC § 101(b) does not apply to self-funded death benefits.
- Self-funded discriminatory benefits. IRC § 105(h) places tax-consequences on discriminatory self-funded medical benefits.

Understand the tax implications within each plan offered; its pros and cons.

PITFALL # 5: [Employer Deductions]

IRC § 419 and 419A make clear what the self-funded employers may deduct for tax purposes. A simple example may provide visual assistance.

Given for plan year/fiscal year, the following:

1. Claim Reserves at beginning of year		
a. Approved for payment	\$100	The claim reserve must be within 35% of the paid claims to be in the <i>safe harbor</i> and, if audited, actuarially supportable as well.
b. Other (reported or not)	\$1,000	
2. Claim Reserves at end of year		
a. Approved for payment	\$150	The funding vehicle for the reserves need not be a trust; a non-profit corporation would also be acceptable.
b. Other (reported or not)	\$1,200	
3. Paid claims for year	\$6,000	

Consider two employers:

Employer A (general asset plan funded)

- Deduction is $(-100) + 6,000 + 150 = \underline{\$6,050}$

Employer B (trusteed)

- Deduction is $(-1,100) + 6,000 + 1,350 = \underline{\$6,250}$

Understand the definitions and the various plan designs that affect employer deductions.

PITFALL # 6: [Funding and Disclosure]

ERISA § 401(b) requires that any self-funded plan not only have a funding policy, but that such policy be stated in the plan document. The setting of this funding policy involves numerous decisions or considerations by the employer. For example:

General asset vs. trusteed plan? How may plan assets be unknowingly created with general asset plans? Contributory v. non-contributory? If trusteed, should such trust be qualified or not qualified? How are fixed costs to be handled? ...

ERISA and the Internal Revenue Code demand that several major reports or items of disclosure be prepared for each plan or funding vehicle. To name a few, these include:

1. **Annual Report:** The so-called 5500 series describes the plan's characteristics and is provided to both the IRS and the Department of Labor.
2. **Summary Annual Report (SAR):** This report is for plan beneficiaries and is a capsule of the form 5500.
3. **Summary Plan Description (SPD):** This item is more commonly referred to as the plan booklet. It is prepared for the plan beneficiaries and describes in understandable language the plan benefits and operation.

Appropriately document all requirements set forth by governing bodies to avoid hefty fines.

PITFALL # 7: [VEBA (IRC § 501(c)(9) Trust)]

By using a Voluntary Employees Beneficiary Association (VEBA) as the governing vehicle of the health care plan, the plan sponsor will fund the plan using a qualified trust. The statute and regulations are extensive but essentially provide for the following:

- **Approval of the plan and trust by means of the IRS Form 1024.**
- **Tax advantages in that; (a) advance contributions (within the IRC § 419A limits) are deductible and (b) investment income is tax-exempt.**
- **Discrimination rules set forth in IRC § 505 must be followed.**
- **Annual tax return on behalf of the trust is filed on IRS Form 990.**

Because of the extensive and burdensome rules and also the limited available deductions, the popularity of the qualified trust has diminished in recent years. Except for large plans, or where otherwise required by law, using a qualified trust, as opposed to a non-qualified trust, is questionable as a "solution for which there is no problem."

The non-qualified trust (a) avoids the IRS-approvals, (b) has the same tax deduction as the qualified trust, (c) avoids the discrimination rules of IRC § 505 but (d) has its investment income fully taxable.

PITFALL # 8: [Administration]

There are three ways of administering the self-funded plans:

- Third party administrator
- Insurer administrator
- Employer (or self-administrator)

The administrator's duties are rather extensive, reflective of the truth that such self-funded plan is, in effect, a miniature insurance company:

- Accounting (employer, plan, trust are entities which require accounting and/or auditing)
- Actuarial (COBRA premiums, funding levels, reserves, etc.)
- Benefit processing
- Recordkeeping
- Managed care-related (utilization review, arranging for benefit carve-outs, provider-assumed risks, etc.)

Understand your capabilities and set in place the appropriate support to ensure compliance and plan efficiency.

PITFALL # 9: [Stop-Loss]

Stop-loss is the fail-safe to the employer which provides financial comfort and assurance that the employer will not be at risk to an extent which **would cause unacceptable financial harm**. The primary responsibility for arranging the stop-loss is typically with the plan's consultant (usually the TPA of smaller-medium plans or the consulting firm with the larger plans). Stop-loss is sold and packaged in many ways:

- Direct with carrier, or indirect through an intermediary (or underwriter).
- Low going-in rates with tougher claims handling rules and terms; or vice versa.
- Broad range of benefits, terms, provisions, etc.
- Carrier dominant to the risk (little or none of the risk retroceded); or vice versa.

Evaluate your risk profile and financials to appropriately set the specific and aggregate levels of stop-loss insurance protection.

Would You Like Me To Personally Reduce Your Costs, Increase Your Efficiency and Improve Your Ability to Recruit...**For Free?**

Because you have shown interest, I'd like to personally invite you to participate in a unique employee benefits experience.

There's no charge for this and it only takes about 60-90 minutes for us to do together.

A partner and I will evaluate your plans at a high level and present an executable strategy built for immediate improvement. We'll tell you exactly what to do, when to do it, how you compare to competitors, and how to ensure your plan out-performs local, regional and national benchmarks.

At the end of this initial planning phase one of these two things will happen:

- 1) **You love the plan** and decide to implement it on your own. If this is the case, I'll wish you the best of luck and ask that you keep in touch with me to let me know how you're doing.
- 2) **You love the plan** and ask to become a client so that I along with my team of consultants, underwriters, attorneys, graphic artists and customer service representatives can personally help you execute, maximize, and benefit from it ASAP.

I fully understand that **your time is the most valuable asset** you have, and I respect that. As with every organization that has engaged me in this process, you will see **tremendous value** in this process.

Regardless of whether you become a client or not. The **worst** that can happen is that you receive an **unbiased strategic plan** from a nationally recognized team of employee benefit experts.

And on the other hand, we immediately begin **executing the details of our plan to drive a greater return on investment for the healthcare dollars being spent.**

Period. It's that simple. Here's how it works:

First, we get on the phone and discuss whether this opportunity is the **right fit for your organization**. If mutually agreeable, we meet in your office for a structured consultation we call Discovery.

I will ask a series of fact-gathering questions to determine your strengths, dangers and opportunities across **11 critical areas proven to impact plan cost**.

Once I have that “raw data”, my team prepares a **36 month plan built for maximum impact and immediate execution**. This plan, called a Blueprint, is a tangible and executable plan with strategies built specifically for YOU to **save time and money**.

There are a number of ways I might do this for you. For example, I might show you...

- How to redesign your plan for better pricing, coverage, participation...
- How to budget and predict future costs...
- How to increase productivity and free up the time of your HR department to focus on more strategic activities...
- How to drastically improve employee perception value to give you an edge in recruiting and retaining top talent...
- How to remove concern and eliminate compliance risk – both governmentally and contractually...
- How to effectively structure and tie a wellness plan into your contribution strategy with greater than 75% participation...

And like I said, there's **no charge** for this.

So why would we offer this?

First of all, it works. I have helped numerous companies **reduce their healthcare costs and achieve a greater return** from their health and welfare investment.

Secondly, it is how I attract new clients. A certain percentage of the companies that accept this offer will hire my firm to implement the details of THEIR Blueprint.

It is our way of providing tremendous value to an organization we believe may be a **long-term partner**...while experiencing a virtual test drive of our intellectual capital and award-winning resources to achieve the **greatest impact in the shortest amount of time.**

In many cases, our compensation structure provides an **actual cost savings to receive more value!**

We are able to do this because we are a **true “in-house” broker.** We do not outsource our technology, compliance, administration, communications, etc.

And if at the conclusion of our meeting, you determine not to hire us...there are no hard feelings or an impending sales pitch coming your way...**EVER.**

This process works, and if we work through this together, **I guarantee you’ll be thrilled with the results.**

Time is a factor. Because of the hands-on nature and amount of time I invest in **building unique strategies,** my time is limited to the number of organizations across the U.S. I can help.

Therefore, it is physically impossible for me to work with more than a handful of organizations. If you feel this is the right fit and worth exploring, click this link to leave me your information and let’s talk...

<http://www.crawford-advisors.com/advantage>

To Your Success,



William J. Grossmiller, V
CrawfordAdvisors, LLC
(800) 451-8519