ERISA Compliance: To Wrap or Not to Wrap

Susan Sieger, ACFCI, CAS
Senior Compliance Consultant
Employee Benefits Corporation
Madison, Wisconsin

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Agenda

- What is a Wrap Plan?
- Who Needs a Wrap Plan?
- What Benefits Can Be Included In a Wrap Plan?
- Penalties for ERISA Noncompliance
- Wrap Plan Design Considerations
- What, Who, and When of SPDs
- Key Takeaways
- Questions
What Is a Wrap Plan?
What Is a Wrap Plan?

Companion to other benefit documents

Used to meet ERISA Plan Document and SPD Requirements

Streamline Form 5500 filing obligations

ERISA Compliance
Types of Wrap Plans

Simple Wrap Plan

- Medical Insurance Certificate
- ERISA Language

More Complex Wrap Plan

- Medical Insurance Certificate
- Dental Insurance Certificate
- Vision Insurance Certificate
- ERISA Language
## What Is a Wrap Plan?

- **What’s Included in a Wrap Plan**
  - “Missing ERISA Information
  - References to other applicable plan documents
  - Bundled wrap plans: list of all component benefits
## What Is a Wrap Plan?

### Required ERISA Provisions in Plan Document

<table>
<thead>
<tr>
<th>Provision</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Named Fiduciary</td>
<td>Claims Procedures</td>
</tr>
<tr>
<td>Procedure for Allocation of Responsibilities</td>
<td>Group Health Mandates</td>
</tr>
<tr>
<td>Funding Policy</td>
<td>COBRA and USERRA Rules</td>
</tr>
<tr>
<td>How payments are made to and from plan</td>
<td>HIPAA Portability, HIPAA Privacy &amp; Security</td>
</tr>
<tr>
<td>Overview of benefits offered and eligibility rules</td>
<td>Minimum Stay After Childbirth</td>
</tr>
<tr>
<td>Amendment Procedures (Employer right to terminate or amend)</td>
<td>QMCSO</td>
</tr>
<tr>
<td>Distribution of Assets on Plan Termination</td>
<td>Other Federal Mandates that Apply to Group Health plans</td>
</tr>
</tbody>
</table>
### What Is a Wrap Plan?

#### Required ERISA Provisions in Summary Plan Description

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan Identifying Information</td>
<td>Statement of ERISA Rights</td>
</tr>
<tr>
<td>Description of Plan Benefits and Eligibility rules</td>
<td>Offer of Assistance in Non-English language (when applicable)</td>
</tr>
<tr>
<td>Detailed claims and appeals procedures</td>
<td>Plan policy on recovery of overpaid benefits</td>
</tr>
<tr>
<td>How payments are made to and from plan</td>
<td>Plans Policy for Insurer Refunds/Rebates</td>
</tr>
<tr>
<td>Plan contribution and funding</td>
<td>Disclosure rights under Group Health Plan Mandates</td>
</tr>
</tbody>
</table>
## What Is a Wrap Plan?

### Why Doesn’t My Carrier Provide this information?

**Compliance Challenges-ERISA Document and SPD**

<table>
<thead>
<tr>
<th>Insured Plans</th>
<th>Self-Funded Plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance Certificates typically do not include all required ERISA language</td>
<td>No Certificate of Coverage describing benefits</td>
</tr>
<tr>
<td>Insurer is only obligated to provide Certificate of Coverage and Summary of</td>
<td>Who will maintain for changes and compliance updates?</td>
</tr>
<tr>
<td>Benefits and Coverage (SBC)</td>
<td></td>
</tr>
<tr>
<td>Certificates of Coverage reflect state insurance laws not ERISA</td>
<td>Compliance falls back on the employer/ Plan Sponsor</td>
</tr>
<tr>
<td>Generally lack eligibility provisions, contribution method, ERISA appeals</td>
<td></td>
</tr>
<tr>
<td>rights, and updated compliance language</td>
<td></td>
</tr>
<tr>
<td><strong>Compliance falls back on the employer/ Plan Sponsor</strong></td>
<td></td>
</tr>
</tbody>
</table>
Who Needs a Wrap Plan?
Who Needs a Wrap Plan?

<table>
<thead>
<tr>
<th>Who is subject to ERISA?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Covers all private sector employers</strong> of all business types who maintain retirement and/or welfare benefit plans for their employees</td>
</tr>
</tbody>
</table>

11A-11
Who Needs a Wrap Plan?

• Employer subject to ERISA that sponsors health and welfare benefit plans that are subject to ERISA

• Employer that has missing ERISA information in their benefit plan documents

• IF APPLICABLE:
  – Employer that wants to file multiple benefit plans on a single Form 5500
### Who Needs a Wrap Plan?

#### Common Myths About Wrap Plans

- **All Employers that have over 100 employees are subject to ERISA.**
  - **FALSE**

- **All Employers that offer benefits are subject to ERISA.**
  - **FALSE**

- **All Employers regardless of employee size are subject to ERISA.**
  - **FALSE**

- **All government Employers are not subject to ERISA.**
  - **TRUE**

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Test Your ERISA Knowledge

<table>
<thead>
<tr>
<th>Myth</th>
<th>True/False</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Employers that have over 100 employees are subject to ERISA.</td>
<td>FALSE</td>
</tr>
<tr>
<td>All Employers that offer benefits are subject to ERISA.</td>
<td>FALSE</td>
</tr>
<tr>
<td>All Employers regardless of employee size are subject to ERISA.</td>
<td>FALSE</td>
</tr>
<tr>
<td>All government Employers are not subject to ERISA.</td>
<td>TRUE</td>
</tr>
</tbody>
</table>
What Benefits Can Be Included In a Wrap Plan?
### What Benefits Are Subject to ERI SA?

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accidental Death &amp; Dismemberment</td>
<td>Group Term Life Insurance</td>
</tr>
<tr>
<td>Apprenticeship</td>
<td>Group Universal Life Insurance</td>
</tr>
<tr>
<td>Biometrics Screening</td>
<td>Standard and/or Limited Health Care Flexible Spending Account (FSA)</td>
</tr>
<tr>
<td>Burial Expense</td>
<td>Health Reimbursement Arrangement (HRA)</td>
</tr>
<tr>
<td>Business Travel Accident</td>
<td>Health Insurance</td>
</tr>
<tr>
<td>Cancer Insurance</td>
<td>Hospital Indemnity</td>
</tr>
<tr>
<td>Daycare Center</td>
<td>Health Screenings</td>
</tr>
<tr>
<td>Dental Benefits</td>
<td>Prepaid Legal Plans</td>
</tr>
<tr>
<td>Disability Insurance</td>
<td>Mini Med Plan</td>
</tr>
<tr>
<td>Disease Specific Coverage</td>
<td>Nurse Help Line</td>
</tr>
<tr>
<td>EAPs (if medical care is provided)</td>
<td>Onsite Medical Clinic</td>
</tr>
<tr>
<td>Executive Medical Coverage</td>
<td>Vision Plans</td>
</tr>
<tr>
<td>Flu Shot Programs</td>
<td>Wellness Plans (if medical care is provided)</td>
</tr>
<tr>
<td><strong>What Benefits Are Subject to ERISA?</strong></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>ERISA Safe Harbor for Voluntary Benefits</strong></td>
<td></td>
</tr>
<tr>
<td>• No contributions from the employer or employee organization (e.g., union)</td>
<td></td>
</tr>
<tr>
<td>• Participation in the program must be completely voluntary</td>
<td></td>
</tr>
<tr>
<td>• The sole function of the employer is to allow the insurer to advertise the plan, collect premiums through payroll and remit them to the insurer (no endorsement of the program)</td>
<td></td>
</tr>
<tr>
<td>• The employer may not receive any form of cash, incentives or other compensation associated with the program</td>
<td></td>
</tr>
</tbody>
</table>
Employer endorsement may include the following:

- Selecting the insurer
- Negotiating plan terms
- Using the employer’s name or associating the plan with other employee benefits
- Recommending the plan to employees
- Stating the plan is subject to ERISA
- Doing more than acting as billing agent
- Allowing employees to pay premiums pre-tax through Section 125
- Assisting employees with claims disputes
### What Benefits Are Subject to ERISA?

#### Examples of Benefits **NOT** Subject to ERISA

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Plan Types</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption Assistance Plans</td>
<td>Financial/ retirement planning programs</td>
</tr>
<tr>
<td><strong>Section 125 Premium Only Plans</strong>*</td>
<td>Fitness/ exercise club memberships</td>
</tr>
<tr>
<td><strong>Transportation Plans (parking/ transit)</strong></td>
<td>Liability or casualty insurance plans</td>
</tr>
<tr>
<td><strong>Dependent Care Flexible Spending Accounts (DCFSA)</strong></td>
<td>Professional development (unfunded)</td>
</tr>
<tr>
<td><strong>Health Savings Accounts (HSA)</strong></td>
<td>Scholarships (unfunded)</td>
</tr>
<tr>
<td><strong>Pet Insurance</strong></td>
<td>Tuition reimbursement</td>
</tr>
<tr>
<td><strong>Unemployment compensation as required to comply with state law</strong></td>
<td>Workers’ compensation provided to comply with state law</td>
</tr>
</tbody>
</table>

*Underlying component plans may be subject to ERISA.*

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11A-18
Penalties for
ERISA Noncompliance
(Plan Document, SPD, 5500)
Penalties ERI SA Noncompliance: Plan Document/ SPD

- Department of Labor Complaint
- Disgruntled Employee Lawsuit
- Department of Labor Audit
- Penalties for ERI SA Non-Compliance
Penalties ERI SA Noncompliance: Plan Document/ SPD

- **Failure to furnish plan document, SPD, or SMM within 30 days of individual’s written request,** the Plan Sponsor may be charged **$110 per day**

- **Failure to furnish plan-related information requested by the DOL carries a penalty of up to $171* per day,** not to exceed **$1,713* per request.**

- **Criminal penalties** may be imposed on any individual or company that willfully violates any requirement of Title I of ERI SA, which includes the SPD and plan document disclosure rules.
  - The penalty per conviction could be **$100,000 or imprisonment for up to 10 years.** The fine can be increased up to **$500,000** when it is imposed against an entity.

*Based upon 2022 amounts*
## Penalties ERISA Noncompliance: Plan Doc, SPD, 5500

<table>
<thead>
<tr>
<th>Awards &amp; DOL fines</th>
<th>Court Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>$17,550 - Failure to provide requested Plan Document and SPD to Participant</td>
<td>Stegelmeier v. Doug Andrus Distributing Employee Health Benefit Plan, 40 EBC 2811 (D. Utah 2007)</td>
</tr>
<tr>
<td>$86,500 - Failure to file complete and accurate Form 5500</td>
<td>Airport Hospitality, LTD, King of Prussia, Penn., 2010</td>
</tr>
<tr>
<td>$17,475 - Employer did not have SPD; only provided certificate of insurance to Participant; repeatedly insisted they were the same thing</td>
<td>Pisek v. Kindred Healthcare, Inc. Disability Ins. Plan, 2007 WL 2068326 (S.D. Ind. 2007)</td>
</tr>
<tr>
<td>$17,550 - Failure to provide requested Plan Document and SPD to Participant</td>
<td>Reddy v. Schellhorn, 38 EBC 1312 (N.D. Ill 2006)</td>
</tr>
</tbody>
</table>
Filing requirement: Unfunded plans that have 100 or more participants on the first day of the plan year

Form 5500 is due seven months following the last day of the plan year

If a filing is missed, DOL penalties may be assessed

- Penalties assessed vary dependent if the plan was filed late or not at all
  - Late Filing: $50 per day with no cap
  - Not Filed: $300 per day capped at $30,000 per year
  - DOL has the authority to assess up to $2,400 per day for failure or refusal to file Form 5500s (2022 penalty)

- These penalties would be assessed per plan per plan year
Penalties Noncompliance: Form 5500 Filing Issues

- Delinquent Filer Voluntary Compliance Program (DFVCP) provides reduced penalties
  - DFVCP was created by DOL to encourage plan administrators to voluntarily file overdue Form 5500s.
  - FY 2021 EBSA received 22,553 Filings under the DFVCP
- Penalties assessed vary dependent upon plan
  - **Small Plan:** $10 per day capped at $750 per plan
  - **Large Plan:** $10 per day capped at $2,000 per plan
- Relief given if filing more than one year per plan
  - **Small Plan:** capped at $1,500 per plan
  - **Large Plan:** capped at $4,000 per plan

https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/dfvcp
Case Study: Never Filed a Form 5500

- Employer with 200 employees has benefit plans that run on a calendar year.
- Employer sponsors health, dental, vision, life/AD&D, Short-Term Disability and Long-Term Disability Coverage.
- All of the benefit plans have over 100 participants on the 1st day of each plan year for the last 5 years.
- Employer has never filed a Form 5500 for any line of coverage.
  - What options does the employer have?

Penalties are per ERISA Plan Number per plan year
Case Study: Never Filed a Form 5500

Example Without a Wrap Plan:

• Employer sponsors calendar year plans for health, dental, vision, life/AD&D, Short-Term Disability and Long-Term Disability Coverage.

• All of the benefit plans have over 100 participants on the 1st day of each plan year for the last 5 years.

• **Employer can use DFVCP.**
  – Each of the 6 plans would file 5 years' worth of 5500s on the same day and the penalty is capped at $4,000 for each plan
  
  • ($4,000 x 6 = $24,000)
Penalties Noncompliance: Form 5500 Filing Issues

Case Study: Never Filed a Form 5500

Example With a Wrap Plan:

• Employer sponsors calendar year plans for health, dental, vision, life/AD&D, Short-Term Disability and Long-Term Disability Coverage.

• All of the benefit plans have over 100 participants on the 1st day of each plan year for the last 5 years.

• **Employer can use DFVCP**
  
  – All 6 plans are covered under a Wrap plan under 1 **ERISA plan number**.
  
  – Employer would file 5 years’ worth of 5500s on the same day and penalty is capped at $4,000 for the wrap plan

  • **Penalty $4,000**
Wrap Plan Design Considerations
Wrap Plan Design Considerations

- How Many Wrap Plans Do I Need?
  - One Wrap Plan?

One Document and SPD to maintain

Bundling all benefits may trigger additional Form 5500 schedules
Wrap Plan Design Considerations

- How Many Wrap Plans Do I Need?
  - Multiple Wrap Plan?

Reduce 5500 obligations: Separate based upon participation counts (< 100 and > 100)

More than one document and SPD to maintain
## Wrap Plan Design Considerations

- **CASE STUDY: How Many Wrap Plans Do I Need?**
  - Employer is a bank and has **150 employees** who all participate in their benefits
  - Employer is using the State Bankers Benefit Plan (trust-based health plan) for their major medical plan
  - State Bankers Benefit Plan completes the 5500 each year
  - Employer also has dental, vision, life/AD&D, STD and LTD plans that are fully insured and there are at least 100 participants in each line of coverage

- **Is a Wrap Plan necessary? Why or Why Not?**
Wrap Plan Design Considerations

- **What Benefits Should Be Included in a Wrap Plan?**
  - **Plan Design Questions**
    - **Benefit Review**
      - Which benefits are subject to ERISA?
        - What to do with non-ERISA benefits?
        - Are Voluntary benefits subject to ERISA or not?
    - **Participant Counts**
      - How will participant counts impact the number of Wrap plans/SPDs you will need?
Wrap Plan Design Considerations

- **What Plan Year and Plan Number Should Be Used?**
  - Welfare benefits must be given a **Plan Name** and a **Plan Number** starting at 501
  - Policy Years may not be the same as the Plan Year
  - Wrap Plan uses single ERISA plan name and plan number
  - Helpful Resource for large employers: [ww.EFAST.dol.gov](http://ww.EFAST.dol.gov)
## Wrap Plan Design Considerations

<table>
<thead>
<tr>
<th>Eligibility Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• <strong>Plan Eligibility</strong></td>
</tr>
<tr>
<td>• Hourly requirements and waiting periods</td>
</tr>
<tr>
<td>• Same rule for all plans or are there differences?</td>
</tr>
<tr>
<td>• <strong>Affordable Care Act Eligibility Options</strong></td>
</tr>
<tr>
<td>• Include details of measurement methods and relevant time periods</td>
</tr>
<tr>
<td>• Refer to external sources for information</td>
</tr>
</tbody>
</table>
Wrap Plan Design Considerations

• **Resolve 5500 Issues**
  – Final return/reports for old plan numbers
  – Using a Plan number that is already in use but for a different plan year
  – Avoid gaps in filing
What, Who and When of SPDs
What, Who, When and How of SPDs

- **What is a Summary Plan Description (SPD)?**
  - Plain language written summary of plan
  - Focus is on communication
  - Plan Document and SPD requirement similar but slightly different
  - Be careful that the document and SPD are consistent
  - Insurance certificates alone will not satisfy the SPD requirement (supplemental ERISA language will be necessary)

**Remember . . .** *Summary of Benefits and Coverage (SBC)* is a requirement of the Affordable Care Act and is an additional requirement used to communicate details of the plan and **does not replace** the SPD.
What, Who, When and How of SPDs?

• **Who gets the SPD?**
  – **Covered Participant**
    • A participant becomes “covered” under a plan on the earlier of
      – (1) The date on which the plan provides that participation begins;
      – (2) The date on which the individual becomes eligible to receive a benefit “subject only to the occurrence of the contingency for which the benefit is provided”; or
      – (3) The date on which the individual makes a plan contribution, whether voluntary or mandatory.
## What, Who, When and How of SPDs?

<table>
<thead>
<tr>
<th>When do Plan Participants get the SPD?</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Summary Plan Description (SPD) distribution</td>
</tr>
<tr>
<td>- Within <strong>120</strong> days for new plans</td>
</tr>
<tr>
<td>- Within <strong>90</strong> days for new participants</td>
</tr>
<tr>
<td>- Every <strong>5</strong> years if material changes</td>
</tr>
<tr>
<td>- Every <strong>10</strong> years if no changes</td>
</tr>
<tr>
<td>- Within <strong>30 days</strong> of a request from a participant</td>
</tr>
<tr>
<td>- <strong>$110/ day penalty for failure to comply</strong></td>
</tr>
</tbody>
</table>
What, Who, When and How of SPDs?

- **Plan Amendments**
  - Material Changes to plan
    - **For example:**
      - Carrier Change, Add or Drop Coverage
      - Plan Eligibility, Plan Year

- **Summary Plan Description (SPD) distribution**

- **Plan Amendments**
  - If material reduction within **60 days**
  - Within **210 days** after the amended plan year ends
  - **Summary of Material Modification (SMM)** can be used to communicate material changes unless you distribute the restated SPD.
What, Who, When and How of SPDs?

Guidelines for Distributing Benefit Information Electronically

• Computer access is a regular function of employee’s job
• Electronic delivery must be calculated to ensure receipt
• Notify employees that documents will be delivered electronically
• Include a statement that employees may receive a paper copy at no charge upon request
• Employees that don’t meet the criteria above can be sent an electronic copy if:
  – Employee provides an email address
  – Employee completes a consent form agreeing to electronic communications
  – Employee consent occurs AFTER employees receive a statement explaining the digital delivery system and what hardware and software may be required to receive it
  – Notify employees of changes to system requirements
Key Takeaways

• Many employers subject to ERISA have certificates of insurance or benefit booklets for the plans they offer to their employees

• The certificate of insurance/booklet by itself does not comply with ERISA’s plan document requirements

• **Wrap plans are a function of complying with ERISA’s plan document and SPD requirements**

• The “wrap plan” incorporates one or more insurance certificates/booklets into a Plan Document that complies with ERISA’s requirements

• **BE PROACTIVE!** Failure to comply with ERISA can be expensive!
Key Takeaways

• It is best to consider your options now and have all your ducks in a row before the DOL knocks on your door.
Thank you for attending!

Susan Sieger, ACFCI, CAS
Senior Compliance Consultant
Employee Benefits Corporation
sue.sieger@ebcflex.com
608-829-8446
Thank You!

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   - Online at [www.iscebs.org/2022symp](http://www.iscebs.org/2022symp)

2. CEBS designees—Be sure to report your Compliance credit.
   - Turn in a white ticket as you leave the room.
   **OR**
   - Report this session individually at [www.ifebp.org/myprofile](http://www.ifebp.org/myprofile)

3. CE credit for other professions (green slip) must be turned in as you leave the room.