

Welfare Wrap Documents

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Agenda

- What is a wrap
- Why wrap
- ERISA Document requirements
 - ftwilliam.com wrap document
- SPDs
- FAQs
- Using wraps into the future

What is a Wrap?

- Welfare document
- “Wraps” welfare plan(s) of a plan sponsor under one document and plan number
- Wrapped plans/contracts still exist and are incorporated
- Wraps don't "do" anything – coverage is provided by underlying plans/contracts
- Wraps are generally form over function (they don't have to be)

Subsidiary Contracts

- ftwilliam.com term for wrapped parts
- Any/all ERISA welfare benefit plans:
 - Insurance contracts
 - Self-funded plans
 - Cafeteria plan
 - Disability
 - Life insurance
 - Etc.

Is a Wrap a Cafeteria plan?

- It depends
- ftwilliam.com:
 - Two separate documents with different functions
 - If you need both a wrap and a cafeteria plan, it will require two ftwilliam.com plan documents

Why Wrap?

- No wrap 'requirement' exists
- ERISA 5500 filings – one filing required for all subsidiary contracts included in a wrap
- ERISA Plan document requirements
- ERISA SPD and other Notice Requirements
- Other rules that apply to employer's welfare benefits package as a whole

5500 FILINGS

5500 filings for Welfare plans

- Not required if < 100 participants as of the beginning of the plan year and unfunded, fully insured, or both
 - Unfunded welfare benefit plan
 - No employee contributions
 - No trust
 - Benefits paid directly from general assets of the employer (contribs forwarded on w/in 3 mos)
 - Cafe plan meeting DOL Tech Release 92-01
 - Fully insured
 - Provided by insurance contracts/policies
- If one plan is subject to 5500 reporting, all included plans will be subject to reporting.

Support/Guidance for Wraps 5500 Instructions

"The fact that you have separate insurance policies for each different welfare benefit does not necessarily mean that you have separate plans. Some plan sponsors use a "wrap" document to incorporate various benefits and insurance policies into one comprehensive plan. ...

Instructions cont...

... In addition, whether a benefit arrangement is deemed to be a single plan may be different for purposes other than Form 5500/Form 5500-SF reporting. For example, special rules may apply for purposes of HIPAA, COBRA, and Internal Revenue Code compliance. If you need help determining whether you have a single welfare benefit plan for Form 5500/Form 5500-SF reporting purposes, you should consult a qualified benefits consultant or legal counsel."

Summary of Instructions

- Wrap documents can be used to incorporate benefits/policies into one plan
- Wrapping will not cause new rules to apply to wrapped parts

Plan Number for Wrap Plan

- Plan number is used in 5500 filings as a unique ID for the plan (combined with EIN)
- Welfare plans start at 501
- A plan number should not be re-used for a different plan (even after termination)
- Numbers should be consecutive

WRAP PLAN DOCUMENTS

ERISA

- Generally applies to all welfare benefit plans sponsored by an employer
- ERISA applies even if no 5500 filed
- Governmental plans and certain church plans are exempt from ERISA
- **ERISA does not apply to insurance issuer**

ERISA Plan Doc Requirements

ERISA section 402

- named fiduciaries w/ authority to operate/administer the plan;
- funding policy;
- procedure for allocation of responsibilities for the administration of the plan;
- procedure for amending the plan;
- basis on which payments are made to and from the plan

Other Wrap Document Requirements / Features

- HIPAA privacy (45 CFR §164.504((f)(2))
- Claims procedures (could be handled via policies)
- QMCSO (procedures required)
- HIPAA Portability
- COBRA
- FMLA/USERRA
- Third Party Recovery/subrogation
- MLRs

Insurance contracts = ERISA plan?

- Yes – but...
- Some ERISA-required information likely missing

ftwilliam.com Wrap General Design

- Designed to be a "one and done" document
- Language concise and as simple as possible
- Provisions generally drafted so as to not supersede subsidiary contracts
- Custom Language saved to system

Subsidiary Contracts

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- All ERISA welfare plans of the plan sponsor
 - or -
- Listed plans

Plan Administrator

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- Generally should be the Plan Sponsor
- Plan Administrator is the named fiduciary
- ftwilliam.com document refers to ERISA 3(16) and 3(21) duties
- May designate other persons to carry out any of its duties

Third Party Recovery

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- Most interest to self-funded arrangements
- Strong language in favor of the plan sponsor
- Plan administrator has discretion
- US Airways, Inc. vs. McCutchen – SCOTUS April 16, 2013



WRAP SUMMARY PLAN DESCRIPTIONS

SPD Requirements

- plan name
- name and address of the employer (list of other employers available if applicable)
- employer identification number (EIN)
- type of plan (medical, dental, etc.)
- type of administration (contract, insurer, etc.)
- insurer that provides administrative services, whether benefits are guaranteed under an insurance policy
- name, business address and phone for the plan administrator
- agent for service of legal process
- trustees of the plan
- if maintained pursuant to CBA
- plan year end date

SPD req's (2)

- conditions of eligibility and description of benefits;
- circumstances for disqualification, ineligibility, denial, loss, forfeiture, suspension of benefits
- sources and amounts of contributions
- the identity of an entity that maintains the fund
- Group health: Cost-sharing, premiums, deductibles, coinsurance, copayments, network, pre-authorization procedures
- QMCSO procedures

SPD req's (3)

- statement of ERISA rights
- claims procedure
- COBRA
- FMLA and military leave
- HIPPA Portability
 - Newborns' and Mothers' Health Protection;
 - Women's Health and Cancer Rights Act
 - Children's Health Insurance Program (CHIP)
 - Grandfathered status

Certificate of Coverage = SPD?

- Yes – but...
- Some ERISA-required information likely missing
- Full list:
 - DOL Reg section 2520.102-3

ftwilliam.com Wrap SPD

- Incorporates all other SPDs
- ERISA, COBRA, HIPAA, FMLA disclosure options
- Options to describe eligibility, employer contributions for each subsidiary contract
 - Does employer already provide?
- Assumptions:
 - No trust
 - Insurance certificates of coverage provided

Notices Req's

- Annual (HIPAA Port)
 - Women's Health and Cancer Rights
 - CHIPRA (Medicaid premium assistance)
 - Summary of Benefits and Coverage (incl. GF plans)*
- As needed:
 - COBRA
 - Cert of creditable coverage (HIPPA Port)
 - HIPAA Privacy*
 - Grandfathered status (GF)
 - Health Care reform claims notices (N/A to GF plans)

FAQS

What "must" be in my wrap?

- It depends
- What services are you providing to your client?

Can wrap document be retroactive?

- No guidance on point

Must all wrapped parts share same renewal period/year?

- No.
- 5500s:
 - Information entered on Schedule A should pertain to the insurance contract or policy year ending with or within the plan year

An aerial photograph of a coastal region, possibly a bay or estuary, with a blue grid overlay. The grid is denser in the upper right and becomes sparser towards the bottom left. The water is light blue, and the land is white with some darker patches. The grid lines are thin and light blue.

RECENT HISTORY AND THE FUTURE



Affordable Care Act Recent History

- SBCs
 - Do NOT replace SPDs
- MLRs
 - May want to modify Section 4.01
 - Standard language as custom – within 3 months
 - Distribute to participants and/or
 - Reduce participant premiums
- 90 day max waiting periods

Waiting Periods (Group Health Plans)

- No requirement to offer coverage to all classes of employees
 - subject to nondiscrimination rules, can exclude part time employees, etc.
- Once eligible, employees can't wait more than 90 days for coverage to start
- Plan may use hours of service to determine eligibility (hours per week/minimum hours)
 - Review examples in IRS Notice 2012-59 (DOL Tech Release 2012-2) for details

Affordable Care Act Coming Soon (?)

- Section 105(h) already applies to health FSAs, HRAs and self-funded
- ACA applies to all group health plans
- Eligibility test
 - 70% eligible
 - 80% benefit of those eligible
 - Classification test
- Benefits test – plan may not discriminate in favor of HCEs

APPLICABILITY OF VARIOUS WELFARE RULES

HIPAA Portability

Excepted benefits

- < two participants (current employees) as of the 1st day of the plan year (retiree HRA);
- Coverage (reimbursements) for dental, vision and LTC benefits if not integral to group health plan; or
- Health FSA
 - Employer offers other group health plan coverage and
 - max benefit less or equal to the greater of:
 - \$500 (plus any participant contribution, if applicable) or
 - two times the participant's salary reduction election for the year.

HIPAA Port Examples

The employer in all examples has 20+ employees participating

1. Employer offers a cafe with a pre-tax premium account for the major medical plan plus HSA contributions and dependent care and makes an employer contribution of \$1,000 per year per employee. HIPAA Port apply?
2. Employer offers a cafe plan with pre-tax payment of major medical (HDHP), HSA contributions, a health FSA limited to dental and vision and an employer contribution of \$1,000 per year per employee. HIPAA Port apply?
3. Employer offers cafe plan with Health FSA, HSA contributions, dependent care, adoption assistance but makes no employer contributions to the plan. HIPAA Port apply?

COBRA

- Generally, all health plans need to comply
- Note that state law may apply
- Exceptions:
 - Small employer - normally employed fewer than 20 employees on a typical working day during the preceding calendar year
 - Church plans
 - Federal govt (PHSA)

FMLA/Military Leaves

- FMLA:
 - At least 50 workers within a 75-mile radius for each working day during each of 20 or more calendar weeks in the current or preceding calendar year
 - Public agencies, public/private schools
- Military: all plans/employers

HIPAA Privacy

- Essentially all health plans
- Very small exception:
 - the plan has less than 50 participants **AND**
 - the plan is employer-administered (no outsourcing to administrator – web hosting a database would count as outsourcing)