

U.S. Employee Benefits Services Group WEBINAR:

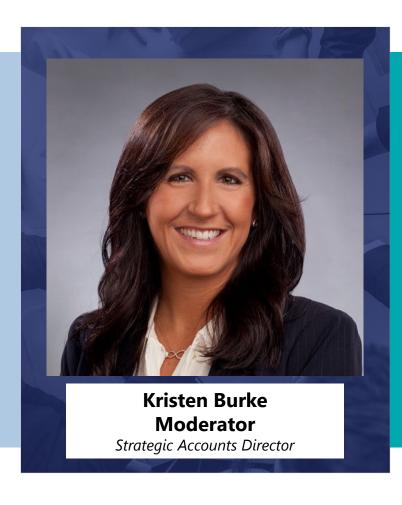
Compliance Update & Top Benefit Trends of 2023



Today's Speakers



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AGENDA

Compliance Updates

ACA filing extension, ACA affordability, and ERISA Compliance for Health and Welfare Plans

Top Benefit Trends of 2023

Life and LTC, Pet Insurance, Individual Disability Insurance
(IDI), Identity Theft, and Lifestyle Specialty Accounts (LSAs)

Q&A

Questions from the audience





Employer Shared Responsibility Mandate

 Complete §6056 reporting (1094-C and 1095-C) has a permanent extension to March 2nd of the given year.

- 2023 ACA Affordability is 9.12%
 - Plan considered affordable if the employee's required contribution for the <u>lowest cost self-only</u> <u>health insurance option</u> offered by the employer does not exceed 9.12%.









What is ERISA?

Employee Retirement Income Security Act

- Enacted in 1974
- Sets minimum standards for pension and welfare plans provided by employers to protect employees

Title I: Protection of Employee Benefit Rights

- Part 1: Reporting and Disclosure
- Part 4: Fiduciary Responsibility
- Part 5: Administration and Enforcement
- Part 6: COBRA Continuation Coverage and Additional Standards for Group Health Plans
- Part 7: Group Health Requirements (HIPAA, NMHPA, WHCRA)



ERISA Preemption

- ERISA will generally preempt state laws that relate to ERISA plans
- State insurance laws continue to apply to insurers
 - State laws regarding insurance policies will not be preempted
 - Insured ERISA plans indirectly subject to state law



Who must comply with ERISA?

Most private sector employers are subject to ERISA

Subject to ERISA

- Corporations
- Partnerships
- Sole proprietorships
- Nonprofit organizations

Exempt from ERISA

- Governmental plans
- Church plans



Key Actors

Separate entity
 Subject to ERISA requirements
 Can sue and be sued
 Creates and maintains the plan
 For single employer plans, the employer is the plan sponsor
 For single employer plans, employer is the default Plan Administrator
 Another entity may be designated in plan documents
 Not the same as a TPA
 Directly responsible for ERISA compliance



Which plans are subject to ERISA?

A plan, fund or program

Established or maintained by an employer

For the purpose of providing welfare benefits to participants and beneficiaries



Welfare Benefits

- Medical
- Dental
- Vision
- Group Life
- Group Short-Term Disability
- Group Long-Term Disability
- Health Reimbursement Arrangement (HRA)

- Group Accident
- Group Hospital Indemnity
- Group Critical Illness
- Flexible Spending Account (FSA)
- Severance Plans
- Group Legal Services



Statutory Exemptions

- Governmental and church plans
- Programs maintained solely to comply with state-law requirements for:
 - Workers' compensation
 - Unemployment compensation
 - Disability insurance
- Plans maintained outside of the United States for non-resident aliens



Payroll Practices

Payments that are made as an employer's normal "payroll practice" are exempt from ERISA



Includes payment of:

Wages, overtime pay, shift premiums and holiday or weekend premiums

Sick-pay or income replacement benefits

Vacation, holiday, jury duty and similar pay



Amounts must be paid out of employer's general assets to current employees



Voluntary Plans

Certain "voluntary employee-pay-all" arrangements are exempt from ERISA

Exempt arrangements

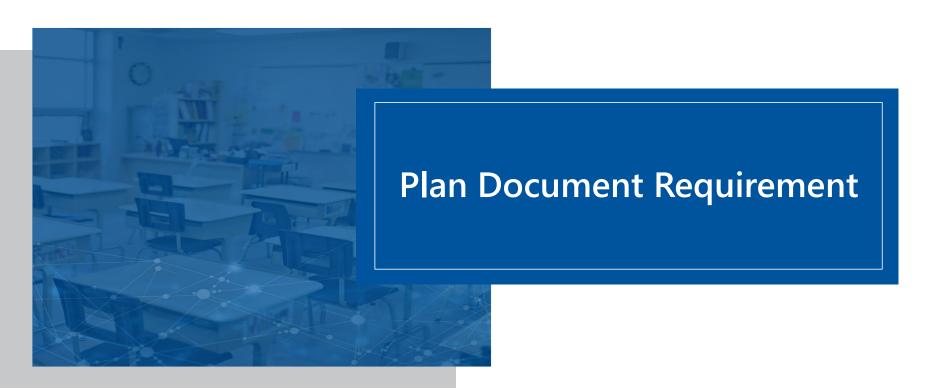
- Employer allows insurance company to sell voluntary policies to interested employees
- Employees pay full cost of coverage
- Employees pay premiums through payroll deductions
- Employer forwards deductions to the insurer

Restrictions

- Employer may not contribute to cost of coverage
- Insurer may not pay the employer
- Employer may not endorse the program







Plan Document

- Every ERISA plan must have a written plan document describing the benefits provided
- An ERISA plan may exist without written plan document but will be out of compliance
- Wrap document for insured benefits
 - Insured benefits controlled by terms of contracts/policies
 - Contracts/policies will not contain all provisions required for ERISA plan document
 - Wrap document is combined with contract/policy to provide missing terms



Plan Document Provisions

The plan document should address:

- Benefits and eligibility
- Funding of benefits
- Treatment of insurance refunds and rebates
- Standard of review for benefit decisions
- Designation of named fiduciary
- Plan amendment and termination procedures
- Required provisions for group health plans
- Other substantive provisions applicable to certain plans (such as subrogation and reimbursement clauses and coordination of benefits provisions)
- Procedures for allocating and delegating plan responsibilities







Summary Plan Description (SPD)

- Document used to communicate plan benefits, rights and obligations
- ☐ Terms may be enforced if more beneficial to participants than the plan document
- Most plans must have an SPD
 - Very limited exceptions apply
 - No exception for small plans
- Provided by Plan Administrator
 - Even if another entity drafts the SPD



SPD Distribution

Deadlines

 Provide within 90 days after participant becomes covered under the plan

Updated SPD must be provided every
 5 years (10 years if no changes)

Approved Distribution Methods

- First-class mail
- Hand delivery
- Electronic distribution if certain requirements met



SPD Content

ERISA provides detailed content requirements for welfare plan SPDs

Plan identifying information	Information regarding contributions and funding
 Description of benefits and eligibility rules 	Claims procedures
 Statement regarding circumstances causing loss or denial of benefits 	Statement of ERISA rights
 Description of amendment, termination and subrogation provisions 	Additional group health plans requirements
	 Prominent offer of assistance in a non- English language (if required)

Insured plans: insurance booklet will usually **not** meet requirements **Solution: wrap SPD document** that contains ERISA elements



Summary of Material Modifications (SMM)

- Material changes to information contained in SPD Must be communicated to plan participants
- ☐ Plan Administrator can use SMM instead of issuing a new SPD
- Deadlines:
 - 210 days after the end of the plan year in which a modification is adopted



Summary of Benefits and Coverage (SBC)

Short summary of benefits and coverage under the plan required by the ACA



Non-duplication rule allows one party to distribute SBC

At enrollment, re-enrollment and upon request



Must provide 60 days' advance notice of any material modification of plan terms or coverage not reflected in most recent SBC



Participant Request for Documents

- The Plan Administrator must furnish certain documents upon written request by a participant or beneficiary
 - Latest SPD, SMMs and annual report
 - Any bargaining agreement, trust agreement or contract
 - Any other "instrument under which the plan is established or operated"
- ☐ Documents must also be available at plan office
- ☐ Copies must be provided within 30 days (reasonable copying fees may be charged)
- □ Penalties of up to \$100/day may be assessed for failing to respond to request



Form 5500 Reporting

Many ERISA plans must report plan information to the DOL each year using Form 5500

Significant penalties

- Up to \$2,259/day for missing or incomplete 5500s
- Criminal penalties for willful failures
- Voluntary correction program available

Exemptions

- Full or partial exemption
- Depend on size



Form 5500 Exemptions

Small welfare plans – full exemption

- Fewer than 100 covered participants at the beginning of the plan year
- Must be unfunded (benefits paid from general assets of employer) or insured (benefits paid through an insurance policy that is not stop-loss insurance) or a combination
- Can accept participant contributions if conditions met



Form 5500 Basics

Deadline

- Last day of the 7th month after plan year ends (July 31 for calendar year plans)
- Automatic 2 ½ month extension available

Plan Administrator

- Is responsible for signing and filing 5500
- Generally, the plan sponsor unless another entity is designated

Electronic Filing

- All Form 5500s must be filed electronically using EFAST2
- Can use DOL web application or third-party software



Delinquent Filer Program

DFVCP

- Delinquent Filer
 Voluntary
 Correction Program
- Available if issues not identified by DOL

Correcting Form 5500 failures

- File a completed Form 5500 for the year
- Pay a reduced penalty

Penalties

- Small plans: \$10/day up to \$750 per year (\$1500 for multiple years)
- Large plans:
 \$10/day up to
 \$2,000 per year
 (\$4,000 for multiple years)



Summary Annual Report (SAR)

- Plans required to file Form 5500 must provide participants with a summary of the information in the Form 5500
- ☐ SAR contents (if reports on 5500):
 - Funding and insurance information
 - Basic financial information
 - Rights to additional information (full annual report)
 - Offer of assistance in non-English language (if required)
- Must be provided within 9 months of the end of the plan year
 - If extension granted for 5500, within 2 months of extension period



Recordkeeping Rules

- ERISA plans must maintain records documenting information that is required by the plan's Form 5500
- Recordkeeping rule applies to plans that are exempt from filing the Form 5500
- Records must be maintained for at least six (6) years after the Form 5500 filing date







ERISA Fiduciaries

Anyone performing fiduciary functions is an ERISA fiduciary

Fiduciary functions

- Exercising discretionary authority or control regarding management of an ERISA plan
- Exercising any authority or control over management or disposition of plan assets
- Rendering investment advice for a fee
- Having discretionary authority or responsibility in administration of the plan



Fiduciary Duties

- **□** Duty of undivided loyalty
 - Act solely in the best interest of plan participants and beneficiaries
- Exclusive benefit rule
 - Use plan assets for the exclusive purpose of paying plan benefits or reasonable expense of plan administration
- □ Prudent person standard
 - Act with the care, skill, prudence and diligence that a prudent person in similar circumstances would use
- Duty to diversify investments
 - Diversify the plan's investments to minimize the risk or large losses
- Duty to act in accordance with the documents governing the plan







ERISA Enforcement

- ☐ The U.S. Department of Labor (DOL) enforces ERISA Title I
- Primary enforcement responsibility held by Employee Benefits Security Administration (EBSA)
- ☐ ERISA violations can be costly for employers
 - DOL investigations
 - DOL enforcement actions
 - DOL penalties
 - Employee lawsuits



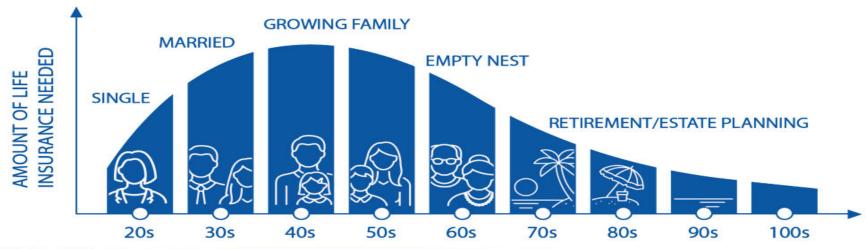








Supplemental & Voluntary Life Insurance with Long-Term Care



SUPPLEMENTAL LIFE
VOLUNTARY LIFE WITH LTC

Supplemental Life

- Designed to bring you inexpensive life insurance during your working years (i.e., 1x, 2x, 3x salary)
- Expensive conversion (switching to Universal or Whole Life) or portability (keeping policy after employment ends). Many increase 900+%
- Rates increase every year based on your age

Voluntary Life with LTC

- · Can keep it for life
- Fully portable with no rate increase
- Offered with little or no health questions
- Long-Term Care conversion option

Life Insurance with Long Term Care

DID YOU KNOW?

7 of **10** people will need Long Term Care after turning 65.



More than **90%** of people are not insured for Long Term Support.



3.7 years: Average duration of Long Term Care need, women.



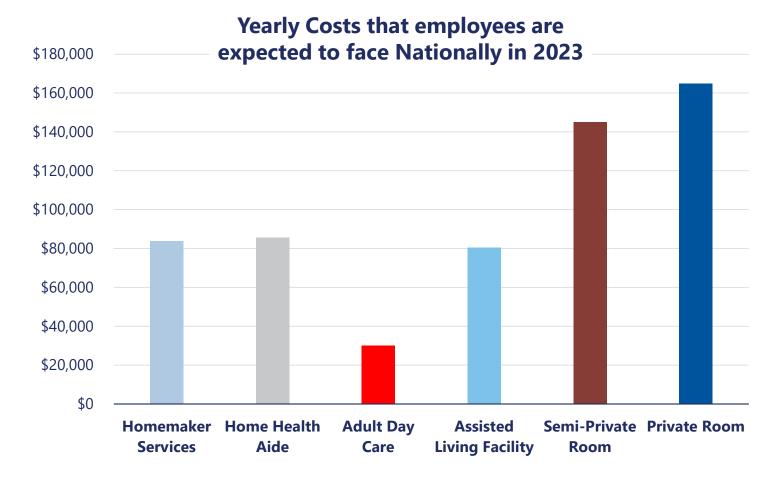




Rely on public benefits such as Medicaid to cover Long Term Supports.



Planning for Long-Term Care Expenses





Long- Term Care Crisis Brewing

Aging Population

- A large generation, Baby Boomers, entering senior years
- Younger generations not having as many children
 1.93 (2020) vs 2.44 (1960)
- Advances in medicine have extended life expectancy 77 (2020) vs 70 (1960)

LTC
Perfect Storm

Prevalence of the need for Care

- Age 65 and older have a 70% chance of needing LTC
 - 43% of LTC claims are for people under age 65
 - Rise in the number of special needs individuals
 - Longer care requirements due to diseases like
 Dementia & Alzheimer's
 - Reduction in intra-family care

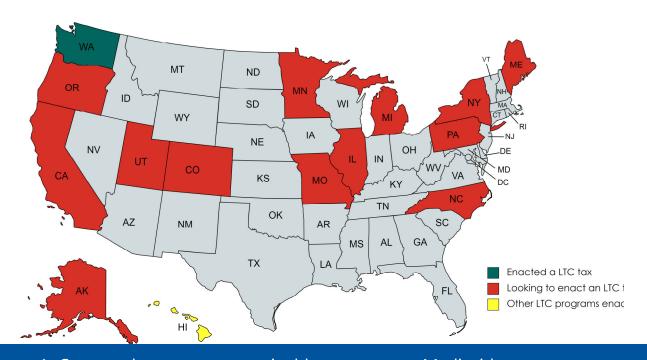
Lack of Preparedness

- 63% of LTC recipients did not consider the need before hand
- Of those that considered the need, about 25% planned for it
- Misinformation that health insurance, Medicare, or Medicaid will cover the cost

- High & increasing costs across the board for in-home and facility care
- 50% of family caregivers report financial strain with out-of-pocket costs and loss of income
- Cost of care for employers with presenteeism, reduced hours, and leaving the workforce



States are considering and/or enacting legislation



Costs to the state – unsustainable run-on state Medicaid program
 The need for care – Americans are at risk & underprepared. People and their families are put in financial peril or forced to bear a difficult burden to manage care.
 Loss of productivity from individuals dealing with families LTC needs

Federal government allowing 401k dollars to pay for LTC policies "Secure act 2.0"

Washington CARES Act

In 2021, Washington became the first state to enact legislation to address the need for long-term care.

Requires all W2 individuals to have a long-term care insurance policy in place in one of two ways:

 Automatic enrollment through the State of Washington with a new payroll tax of .58%, paid by the employee.

 Enrollment in a qualified private long term care policy prior to 11/1/2021 which would allow one to opt out of the state ran LTC

program and the new payroll tax.



Elements of the Washington CARES Fund:

- Benefits are only payable to current residents & facilities in Washington State
- \$100/day for 365 days. \$36,500 lifetime benefit maximum
- No income cap on the 0.58% payroll tax
- No guarantee that the current payroll tax percentage of 0.58% will not increase in the future
- 3-year partial / 10-year full vesting schedule to receive benefits
- No future opportunity to opt out of the plan if an individual does not have their own LTC plan prior to 11/1/2021



New York Legislation Update

Tax – Proposed Timeline- bill in Committee

- □ Beginning January 1, 2025, any employee in New York must pay a to-be-determined percentage of annual wages into a state LTC fund through payroll taxes. The proposal drafted duplicates the some of the Washington LTC plan, but makes some significant changes from that original legislation
- ☐ Tax assessed against all W2 income
- ☐ Tax will be set by September 30th of the year beginning one year after article takes effect
 - Bill proposes 2023 legislative session (Jan 2023 to early May 2023) and signed into law by the Governor in same year.
 - November 15, 2023, the committee needs to submit the first actuarial report (and every year after) and no later than January 1, 2024 will need to create and maintain the registry for all people who are going to pay the tax and who have opted opt.
 - By September 30th, 2024, the state controller will set the tax amount
 - Tax will begin January 1, 2025, and will be re-assessed as needed for any adjustments needed

Benefits – January 1, 2028 (5 years from when article takes effect)

- □ \$100 per day for a max benefit of \$36,500; adjusted annually for inflation
 □ 2-year benefit period
 □ (Cap't perform 3 Activities of Daily Living)
- ☐ Can't perform 3 Activates of Daily Living
- ☐ 45-day elimination
- ☐ Benefit adjustments can be made at the recommendation of the panel
- ☐ Comprehensive coverage (institutional and community-based care)

Eligibility

- NY requires employee eligibility audits and resumption of payroll tax deduction, if employees drops coverage related to their exemption
- ☐ Worked at least 500 hours during each of the 10 years without interruption for 5+ consecutive years or 3 years within the last 6 years of application for benefits
- ☐ 18 years + old

NY Considerations

Things to Consider

• In New York, the average cost of LTC is more than \$158,797/year for private room nursing home, and \$253,344 for 24 care at home (per Genworth Financial)

Opting Out

- Opt-out provision if purchased before program enactment (private long term care insurance in effect by January 1st of the year the article takes effect). **Employees will need policy in place on or before December 31, the year before enactment.**
- If exemption has been issued and employee ceases to hold private long-term care insurance for more than 90 days, exemption is permanently revoked, and employee will be subject to the tax
- Any premium contribution not paid after such date shall be subject to such reasonable monetary penalties and interest as shall be determined by the department and my levy an additional premium for the remainder of the period of coverage

Two (2) more states close to follow Washington with an LTC tax



Pennsylvania

Right now, their plan is almost an exact copy of the Washington State Cares act, but his is seen as a placeholder to get the conversation started.

Benefits – beginning January 1, 2026

- Up to \$100/day up to a \$36,5000 maximum in lifetime benefits
- Payroll tax is .58/\$100 of W2 earnings, no cap –same as WA
- Claim qualification based on 3 activities of daily living (ADLs)
- Comprehensive coverage (institutional and community-based care)
- Provision that PA Department of Revenue (NOT employer) will notify individuals of future payroll tax increase and the rationale of those increases
- No portability



California

Have created a taskforce that worked all year to give the legislature 5 strawmen. Currently do not have a bill in place but excepted sometime in 2023.

Effective Date – beginning January 1, 2024, or later depends on passage

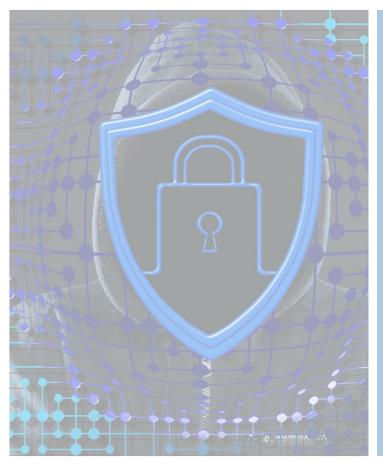
- Straw ballot currently has 5 plan designs
- Reimbursement benefit type; maximum monthly benefit period (between \$1,500 and \$6,000)
- 2-year benefit period (3 of 5 plans)
- 2 of 6 Activities of Daily Living (ADLs)
- Considering designs with and without a reduced cash benefit
- 0-, 30-, and 90-day elimination period being considered
- Inflation adjustment to be assessed annually (not automatically applied)
- Care settings vary between options
- Domestic portability; either full or partial outside CA
- Waiver for those at or below poverty level
- Vesting Criteria: 5 or 10 years
- For those unable to vest: Pro-rated benefits (no benefits for individuals who contribute for less than 5 years, 50% of the benefits for individuals who contribute for 5 years, grading up by 10% each year up to 100% of benefits in year 10)





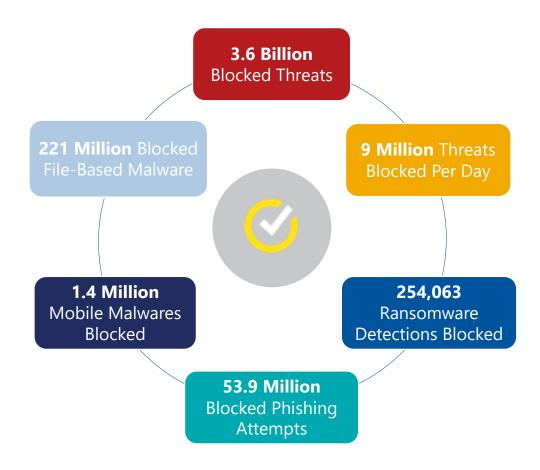


Cyber Theft in America



20%	or 52 Million Americans have been affected by Identity Theft
75 %	of identity theft victims who had accounts opened in their name did not find out from their bank or credit card company
\$45B	was stolen from ID theft victims last year
45%	increase in attacks (phishing/malware) on phone/computers in 2020
2.7B	hours Spent by cybercrime victims trying to resolve their issues in the last year

Prevention leads to better protection*





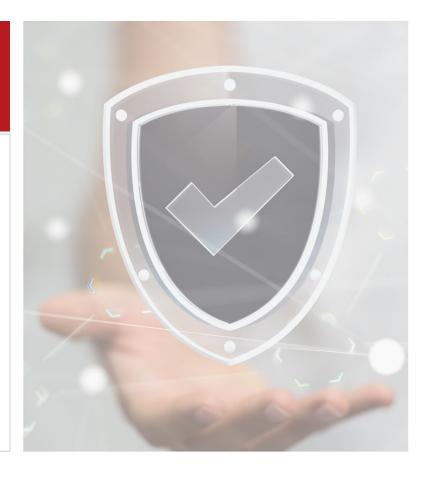
Impacts on the Employer

Productivity

- An employee who is victim of IDT means absenteeism or "presenteeism" for the employer.
- Productivity effect equal to loss due to disability for employer.
- **Identity Theft**: Avg loss of productivity:
 - 6 months duration to resolve
 - 100-200 hours of time for EE
 - IRS Fraud (273 days to resolve)
 - New Account Fraud (14 days)
- Key to Productivity: Having an Identity
 Theft Carrier to handle claims allowing EE to return to—or-- focus on work.

Protecting the Employer

- A safe employee means a safe business or enterprise.
- An employee with protected personal devices has positive impact against a breach of employer data.
- Protecting employee and family cyber health is in line with employer's wellness initiatives.
- Many ER data breaches result from hacked employee devices (phones/computers).
- Unemployment fraud impacts the employer's State Unemployment tax rate.
- Breach of employer data requires notification and fosters employee resentment.





The Cyber Wellness Difference

Family Monitoring

Help protect families and shared devices

Online Privacy

Virtual private
networking helps protect
your privacy when
information is being sent
or received over Wi-Fi,
wired, or mobile
connections.

Anti-Tracking

Identity Theft Protection

Monitor for threats to your identity and provide restoration services to help if you do have an identity theft issue

Device Security

Multi-layered advanced security helps protect your devices and information from online threats like viruses, malware, and phishing.

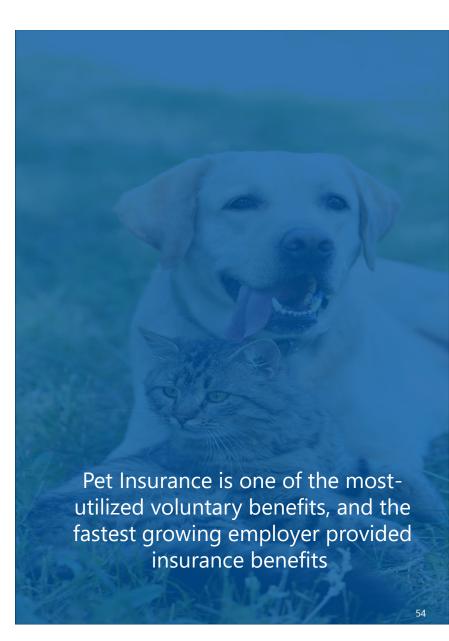






Pet Insurance: Healthcare for Your Pet

- **75%** of employees own a pet
- 88% of Americans with a pet insurance policy think pet insurance is worth the cost
- Almost 2/3 of pet parents say they are concerned about their financial ability to care for their pet
- 94% consider pets as part of their family
- About 45% of pet owners will spend the same or more on an animal's healthcare than on their own.
- Of those surveyed, 10% of pet owners say they had missed a payment on another bill to pay for pet care.
- On average, it can cost an employee between \$700 and \$2,000
 per year in veterinary bills to care for a healthy pet





Pet Insurance: Financial Protection and Peace of Mind

The cost of pet ownership is rising²



70% increase in pet care costs

over the last decade



\$30.1B

spent on veterinary care and product sales in 2020



\$11K

spent by average pet owner to save their pet's life

Pet insurance offers peace of mind²



78%

of people underestimate how much owning a dog or cat costs in the first year alone



33%

of Americans can't cover an unexpected medical bill over \$1000



56%

of employees are stressed about their financial situation



Pet Insurance: Options

Discount Plan

- Discount on Vet Bills when you go to a participating Veterinarian
- Discount on medicines (that can be delivered (Free Shipping) or picked up a CVS, Target Walmart etc.)
- Discounts on Pet Toys and Food
- Lost Pet Recovery System helps recovery lost pets
- 24/7 Telemedicine for dogs or cats. Very similar to telemedicine that employees use

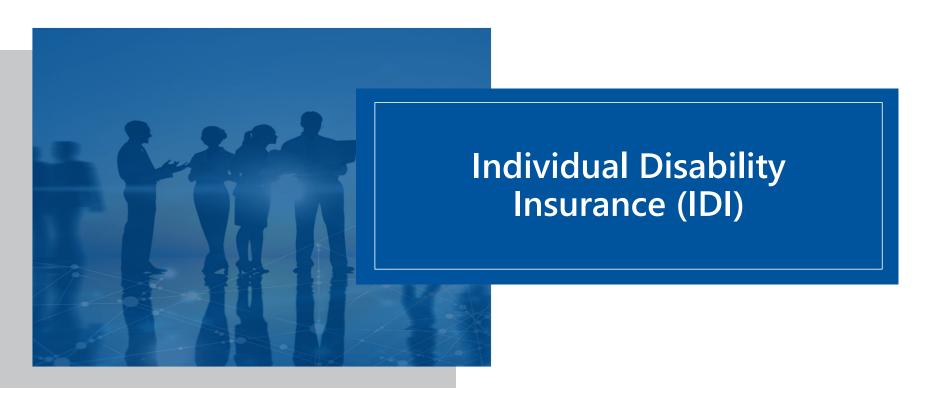
Fully Insured

- Go to any vet and receive treatment for pet and insurance reimburses a certain percentage up to a plan maximum
- Traditional Model is Underwriting each pet (state live in, breed, and age of pet). You
 would pay different rates and could be denied coverage. Won't cover all pets.
- Can be expensive, but cheaper than individual market due to group discounts.









What is the Individual Disability Insurance Need?

Complete benefits package

 Ensuring all Employee's are on a level playing field percentage wise

Attract and retain key talent

- Enhancing the plan offering for "key" employees
- Reverse discrimination / have income exposed target is generally high net worth individuals
 - Who isn't getting 60% (generally high net worth individuals)
- Recruit retention and want to give more to key execs
 - More recoup income up to 65-75%

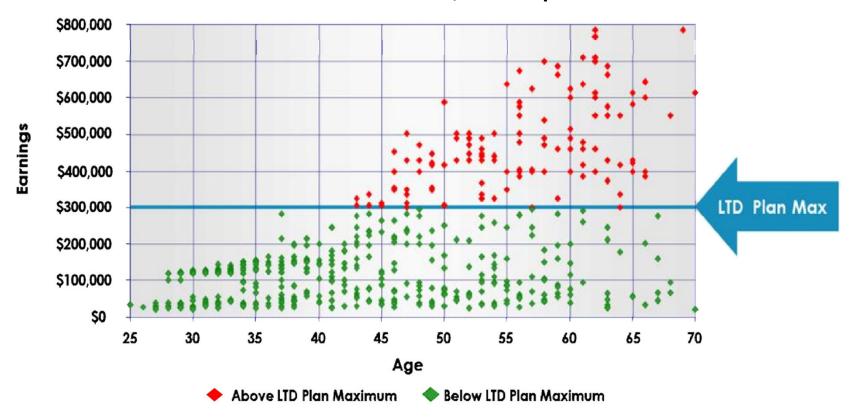
Taxation

- Is a filed product unlike long term disabilitytaxation doesn't get factored into price
 - Grossed up free with Individual Disability
 Income
 - Is to avoid tax at claims time the carrier will pay tax and
 - Inflates your income by price of IDI instead of at claims time



What is the Individual Disability Insurance Need?

Assume 60% to \$15,000 LTD plan





Income replacement shortfall due to benefit maximum

What is the Individual Disability Income Need?

Assume 60% to \$15,000 LTD plan

Salary	Bonus/ Commission	Total Compensation	Group LTD Benefit	Total Income Replacement	Total Income Replacement After Tax
\$100,000	\$25,000	\$125,000	\$6,250	60%	43%
150,000	37,500	187,500	9,375	60%	43%
200,000	50,000	250,000	12,500	60%	43%
250,000	62,500	312,500	15,000	58%	41%
300,000	75,000	375,000	15,000	48%	35%
350,000	87,500	437,500	15,000	41%	30%

This column Represents the NEW after-Tax Income Replacement







Lifestyle Specialty Accounts (LSAs)

- Personalization of Benefits
- Growing Market 75% increase in number of employers offering LSA (aka specialty accounts).
- Employer Differentiation
- Employer return on investment generally measure success by sentiment, retention and rate of adoption
- Plan Design
 - 60% of expenses are tied to physical wellness related item (gym / sports leagues (entry fees) Nutrition and wellness counseling)
 - Typically 1 annual employer contribution made at the start of the year
 - \$500 \$1,000 average contribution

Categories

- Physical wellness gym membership, sports leagues, nutrition counseling, exercise equipment
- Financial wellness estate planning, housing, utilities, financial planning
- Mental wellness Meditation apps and classes, Wellness retreats, non-medical behavioral health counseling
- Family wellness Child care services, elder care services, new parent coaching, college admission prep, college planning counseling, student loans/college tuition
- Could also include Pet Benefits and Supplies, Special Transportation (taxi, gas tolls), Utilities (phone, internet), Home office supplies.



Lifestyle Specialty Accounts – The Basics

- Post-tax participant reimbursement
 - Employees pay for expenses and submit claims for reimbursement online
 - Employees reimbursed via payroll
- Simple Plan Administration
 - Adjudication receipt date, amount, member name, claim type, self-attestation from consumer
 - Flexibility to design plan to meet needs
 - Robust reporting
 - Customer support
- Complements the Health Savings Account
 - Offers peach of mind to employees through additional financial support
 - Provides opportunity to cover expenses that are important to employees but not eligible through other benefit plans



QUESTIONS?

