

Beyond Blind Trust

A Fiduciary Framework for Managing Healthcare Plans

Beyond Blind Trust: A Fiduciary Framework for Managing Healthcare Plans

Agenda

- Who We Are
- Why We're Talking About Fiduciary
- What is an Employers Fiduciary Responsibility
- What Started Healthcare Lawsuits
- Quick Recap of Lawsuits
- 3 Actions Employers Must Complete
 - Letter of the Law
 - Penalties
 - What we see
 - Spirit of the Law
- Bryan Orr, Kalos Services Inc – Clermont, FL



President, Ethos Benefits

Chelsea M. Ryckis

- Overcame a **traumatic brain injury** and leveraged her experiences to transform the health insurance industry.
- **Named 'Most Innovative Healthcare Consultant of 2024'**
- **Named 2024 'Advisor of the Year' by BenefitsPro**
- Host of the **Top Industry Podcast 2025**, The Business of Benefits
- **Producer of the documentary "It's Not Personal, It's Just Healthcare."**
- Certified Health Value Advisor, Advanced Self-Funding Specialist, and Certified in Organizational Wellness Programs

It's not personal.
It's just ~~business.~~
Healthcare.



CEO, Ethos Benefits

Donovan J. Ryckis



Started in Financial Services in 2013

2015 – “Fiduciary Rule”

“You have to act in the best interest of your clients, be transparent in compensation, avoid misaligned incentives”

Journey to understanding Fiduciary Securities Licenses

License	What It Allows	Compensation Model	Standard of Care	Advice Scope
Series 6	Sell mutual funds, variable annuities, unit investment trusts (UITs).	Commission-based (Earns from product sales).	Suitability Standard (Recommends "suitable" investments, not necessarily the best).	Limited to products they sell (mutual funds, insurance-based products).
Series 65	Provide financial planning and investment advice for a fee .	Fee-based (Earns from advice, not product sales).	Fiduciary Standard (Legally required to act in client's best interest).	Can give holistic financial planning, retirement planning, and tax-efficient investment advice.

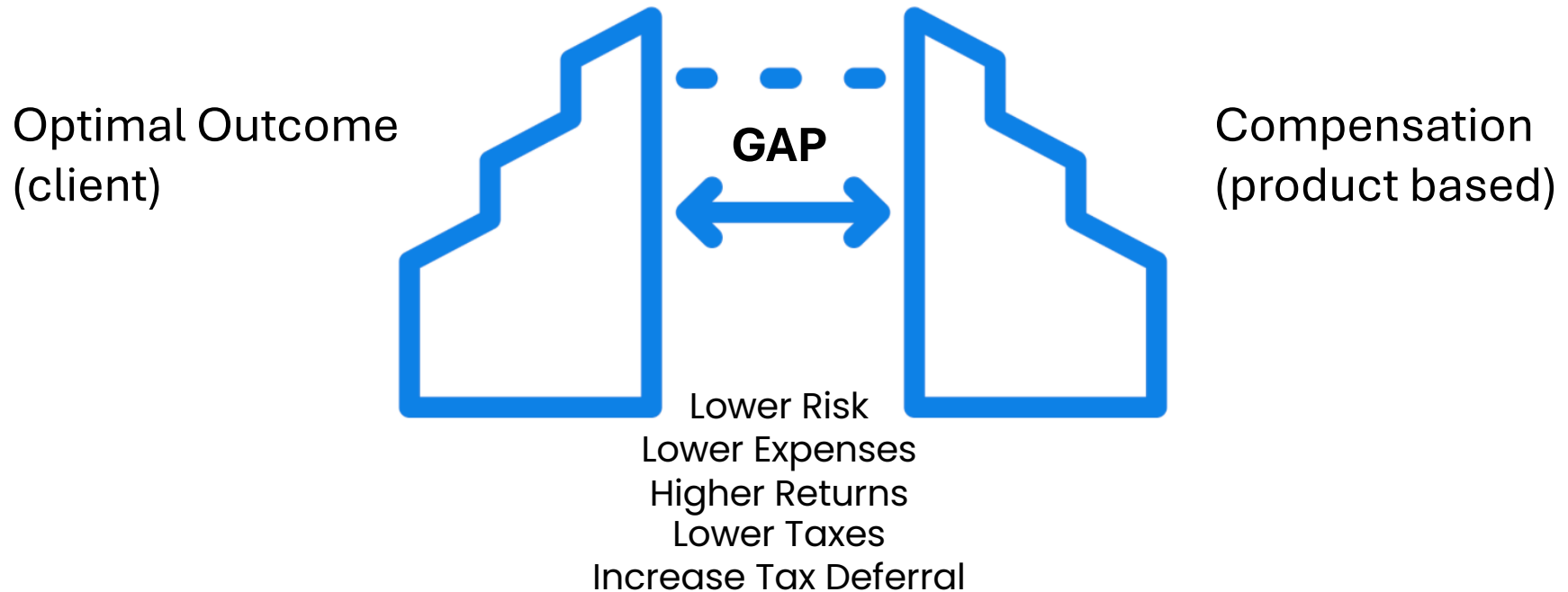
My Plan: License as a Fiduciary

Registered Investment Advisory

1. License as a Fiduciary
2. Open my own Registered Investment Advisory
3. Advise in "The Gap"

My Plan: License as a Fiduciary

Registered Investment Advisory



January 2017

My Intro to Health & Welfare Plans



Client Call – 37% Increase, best option

“Send me everything you have”

One Page – two paragraphs and 37% increase

1,000's of transactions – RX, PCP, Spec, Hospital...

Comparing Fraud, Waste and Abuse

401(k) v. Healthcare Plans

First Health Plan

40% Premium Reduction, Matched SBCs,
HMO to PPO, No Increase

\$2,400 Annually

Average 401(k)

25 – 50bps Expense Ratio Reduction
Avg Balance \$126,000

\$630 Annually



A Needed License...

Fiduciary Health & Welfare Consultant

License	What It Allows	Compensation Model	Standard of Care	Advice Scope
215 License	Sell life insurance, health insurance, and variable annuities in Florida.	Commission-based (Product-driven compensation).	Suitability Standard (Must recommend appropriate policies, not necessarily optimal).	Limited to insurance products: life, health, and annuities — no investment advice or planning.
(Needed License) Fiduciary Health Advisor	Provides advice on Health & Welfare plans for plan optimization and customization suited to the plan sponsor and participants.	Fee Based (Earns from advice not product sales)	Fiduciary Standard (Legally required to act in client's best interest).	Holistic Health & Welfare planning for optimal cost and quality metrics.

In Action

Health Plan Lawsuits



Lewandowski v.
Johnson & Johnson

February 4, 2024

US District Court for the District of New Jersey



Navarro v.
Wells Fargo & Co.

July 30, 2024

US District Court for the District of Minnesota



S.M.O. v.
Mayo Clinic & MMSI
(DBA Medica)

April 2, 2024

US District Court for the District of Minnesota



School Board of
Osceola County, FL v.
Gallagher Benefit Services, Inc.

November 23, 2021

US District Court for the Middle District of FL



Seth Stern et al. v.
JPMorgan Chase & Co. et al

March 14, 2025

US District Court for the Southern District of New
York



Wiederhold v.
AssuredPartners, Inc
(Gallagher)

February 5th, 2025

US District Court for the District of Maryland

Fiduciary Duties

ERISA Standards

Fiduciary Duties Defined by ERISA (since 1974):

ERISA § 404(a)(1) lists **core fiduciary duties** that apply to both retirement and health & welfare plans:

- 1. Duty of Loyalty** – Act solely in the interest of plan participants and beneficiaries.
- 2. Duty of Prudence** – Act with the care, skill, and diligence of a prudent person.
- 3. Duty to Diversify** plan investments (retirement plans primarily).
- 4. Duty to Follow Plan Documents**, insofar as they comply with ERISA.

What started Healthcare Lawsuits?

Consolidated Appropriations Act 2021

Consolidated Appropriations Act of 2021 (CAA 2021) reinforced and clarified fiduciary obligations in **healthcare**, especially around:

1. Fee disclosures

2. Gag clause prohibitions

3. Access to claims data and ensuring reasonable plan costs.



1. Fee Disclosures – Consolidated Appropriations Act of 2021

Letter of the Law – CAA 2021

Service providers who expect to earn at least **\$1,000** in total compensation related to a group health plan **must provide detailed written disclosures before** a contract is signed or renewed. These disclosures must outline the services provided, whether the provider acts as a fiduciary, and all forms of direct and indirect compensation – including commissions, fees, bonuses, or other payments from third parties. Employers must review and evaluate these disclosures to determine the reasonableness of the compensation and identify any conflicts of interest. Failure to obtain or assess this information can cause the arrangement to **become a prohibited transaction** under ERISA, **exposing the employer to fiduciary liability.**

1. Fee Disclosures – Consolidated Appropriations Act of 2021

Penalties for Non-Compliance

- **Overpaying for Insurance Costs**

Not understanding fees, and incentives can lead you to receive advice from conflicted parties focusing on their best interest.

- **Personal fiduciary liability**

The employer (plan fiduciary) may be personally liable for any losses to the plan resulting from the prohibited transaction under **ERISA §409**.

- **IRS excise tax penalties**

Under **Internal Revenue Code §4975**, a prohibited transaction triggers an excise tax of **15%** of the amount involved, and up to **100%** if not corrected quickly.

- **Department of Labor enforcement**

The DOL can bring investigations, civil actions, or settlements for breach of fiduciary duty.

- **Risk of participant lawsuits:**

Plan participants could sue fiduciaries for damages related to overpayment of plan expenses or hidden conflicts of interest.

1. Fee Disclosures – Consolidated Appropriations Act of 2021

What We See

Only the broker, after decision making, fine print & big

EXHIBIT B
COMPENSATION DISCLOSURE STATEMENT

Line of Coverage / Service	Company	Commission ^{1&2}	Third Party Compensation	Direct Client Fees ³	Effective Date
Medical	BCBS of NE	\$30 PEPM	n/a	n/a	1/1/2024
Medical	Kaiser Permanente-Hawaii	3.5%	n/a	n/a	1/1/2024
Plan Document Services		n/a	n/a	\$600	1/1/2024
Dental	Mutual of Omaha	10%	n/a	n/a	1/1/2024
Vision	Mutual of Omaha	10%	n/a	n/a	1/1/2024
Life and AD&D	Sun Life	Graded Scale, 12%-25%	n/a	n/a	1/1/2024
Voluntary Life	Sun Life	15%	n/a	n/a	1/1/2024
Short Term Disability	Sun Life	10%	n/a	n/a	1/1/2024
TDI-Hawaii	Sun Life	0%	n/a	n/a	1/1/2024
Long Term Disability	Sun Life	Graded Scale, 15%-1%	n/a	n/a	1/1/2024
Accident	Mutual of Omaha	10%	n/a	n/a	1/1/2024
Commuter Benefits	WEX	n/a	n/a	n/a	1/1/2024
COBRA Administration	Paylocity	n/a	n/a	n/a	1/1/2024
HSA Administration	Paylocity	n/a	n/a	n/a	1/1/2024

It should also be noted that:

- [REDACTED] not an affiliate of the insurer or vendor whose contract is recommended. This means the insurer

It should also be noted that:

- [REDACTED] not an affiliate of the insurer or vendor whose contract is recommended. This means the insurer or vendor whose contract is recommended does not directly or indirectly have the power to exercise a controlling influence over the management or policies of [REDACTED]
- [REDACTED] ability to recommend other insurance contracts or vendors is not limited by an agreement with any insurance carrier or vendor affecting the transaction for applicable plan(s) in the ordinary course of [REDACTED] business. Thus, pertinent transaction(s) are at least as favorable to the applicable plan(s) as an arm's length transaction with an unrelated party.
- [REDACTED] not a trustee of the plan(s) and is neither the Plan Administrator of the plan(s), a Named Fiduciary of the plan(s), nor an employer which has employees in the plan(s).

¹ Commissions include all commissions/fees paid to [REDACTED] that are attributable to a contract or policy between a plan and an insurance company, or insurance service. This includes indirect fees that are paid to [REDACTED] paid by a third party, and includes, among other things, the payment of "finders' fees" or other fees to [REDACTED] a transaction or service involving the plan.

[REDACTED] or may receive supplemental compensation from insurance carriers and vendors, normally calculated at the end of each calendar year, that are contingent on a number of factors including the overall number of employer plans represented, plan retention rates, and overall premium growth. Historically, supplemental compensation has ranged, on average, between 0-3% based on specific carrier programs. These plans have no effect on premiums. Further, [REDACTED] may receive non-cash compensation from plan vendors or service providers that are not in connection with any particular client. If you have any questions regarding direct or indirect compensation received by [REDACTED], please contact your dedicated [REDACTED] advisor or refer to the [REDACTED] [REDACTED]

³ Direct Fees include compensation [REDACTED] paid directly by the plan sponsor/Client.

1. Fee Disclosures – Consolidated Appropriations Act of 2021

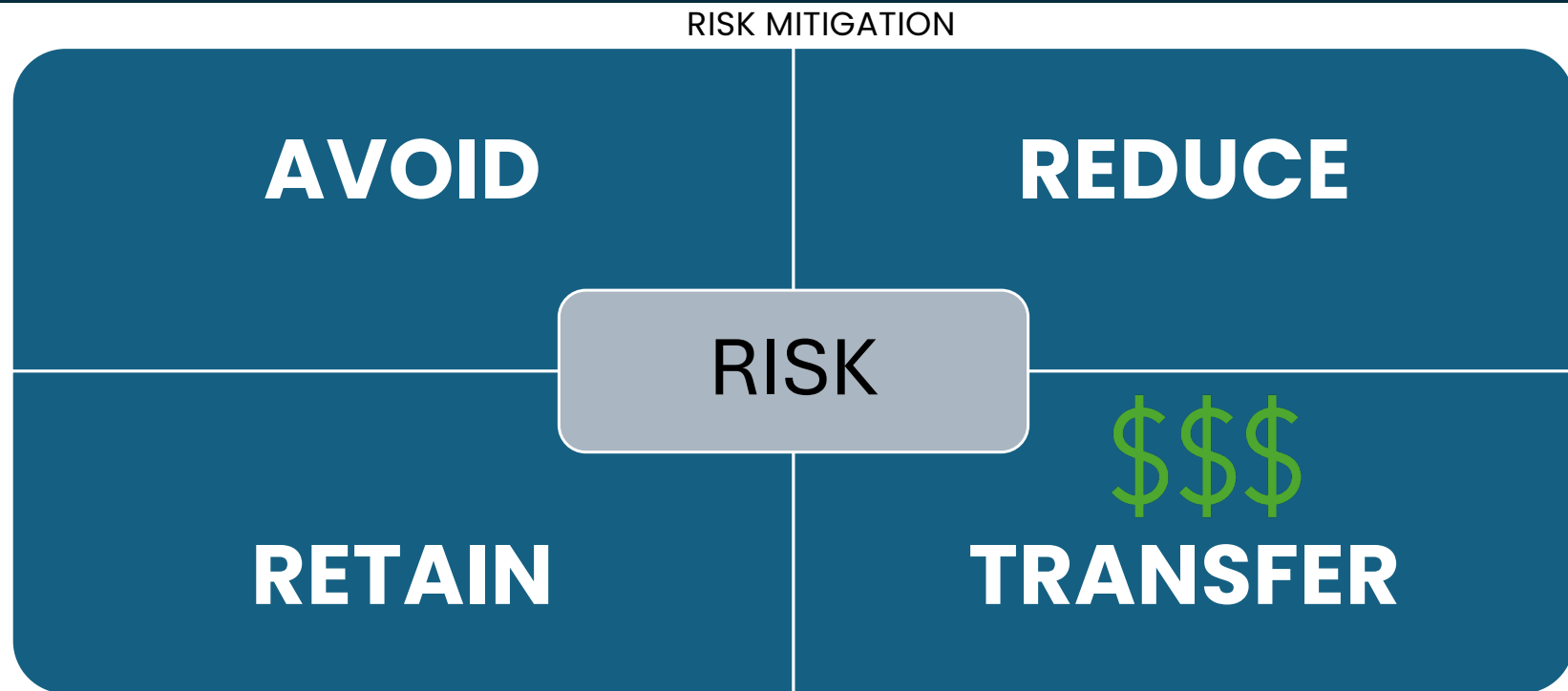
Spirit of the Law – Understand Fees

You, employer and plan sponsor, set the incentives not the insurance company.

Renewal Spreadsheet	Carrier A	Carrier B	Carrier C
Compensation	\$309,432	\$178,200	\$178,200

1. Fee Disclosures – Consolidated Appropriations Act of 2021

Spirit of the Law – Align Fees



There is no compensation for Risk Avoidance and Risk Reduction. Brokers sell the Risk Transfer.

QR Code at the End of Presentation

408(b)(2) Compensation Form



Rule 408(b)(2)(B) Compensation Disclosure

Covered Service Provider ("CSP")	[CSP NAME]
Prepared by:	[NAME]
Prepared for ("Customer"):	[CLIENT]
Plan Effective Date:	[DATE]

Following is CSP's Compensation Disclosure set forth as required by The Employee Retirement Income Security Act of 1974 ("ERISA"), as set forth in [29 U.S. Code § 1108\(b\)\(2\)\(B\)](#). All Capitalized terms are defined in the Glossary.

I. DESCRIPTION OF SERVICES TO BE PROVIDED

ERISA Section 408(b)(2)(B)(iii)(I) requires CSP to disclose to a Responsible Plan Fiduciary a description of the services to be provided to the Covered Plan pursuant to the contract or arrangement.

[Describe in sufficient detail said services]

II. FIDUCIARY STATUS

ERISA Section 408(b)(2)(B)(iii)(II) requires CSP to provide a statement if the CSP, an Affiliate, or a Subcontractor will or will not provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the Covered Plan as a fiduciary.

CSP <does OR does not> reasonably expect to provide services pursuant to the contract or arrangement with Customer directly to the covered plan as a fiduciary.

III. Direct Compensation

Section 408(b)(2)(B)(iii)(III) requires a description of all Direct Compensation the CSP and its affiliates and/or subcontractors reasonably expect to receive in connection with the services described in Section I. Compensation may be expressed as a monetary amount, formula, or per capita charge. If the compensation cannot reasonably be expressed in such terms, the CSP is required to provide a good-faith-estimate.

CSP, its affiliates and/or subcontractors earn the following direct compensation (enter each item for which CSP or an affiliate or subcontractor receives direct compensation in a separate table, describing each instance in sufficient detail and whether the compensation is received by CSP or an Affiliate or Subcontractor. If an Affiliate or Subcontractor, provide the name of such entity):



2. RxDC Reporting– Consolidated Appropriations Act of 2021

Letter of the Law

Legal Requirement

Group health plans and health insurance issuers must report detailed information about:

- Prescription drug spending
- Premiums
- Enrollment
- Top drugs by spend
- Rebates and discounts
- This requirement applies annually, and the report is referred to as the RxDC Report (Prescription Drug Data Collection).



2. RxDC Reporting– Consolidated Appropriations Act of 2021

Penalties for Non-Compliance

Employers (plan sponsors) are **ultimately responsible** for ensuring RxDC reports are submitted timely, completely, and accurately — even if vendors assist.

Noncompliance can trigger **\$100/day/employee penalties**, IRS excise taxes, DOL enforcement, and significant fiduciary liability under ERISA.

Agencies Involved:

- **Department of Labor (DOL)** (under ERISA)
- **Department of Health and Human Services (HHS)** (for non-ERISA plans)
- **Internal Revenue Service (IRS)** (for tax penalties)

Possible Actions:

- **DOL audits and investigations** into health plan compliance
- **IRS assessments** of excise taxes
- **CMS compliance review** through Centers for Medicare & Medicaid Services



2. RxDC Reporting– Consolidated Appropriations Act of 2021

What We See

PBM: “Don’t worry, we’ll do the reporting for you”

Employer: “Can I have a copy”

PBM: “Nah”



CMS has made it clear that the employer is responsible.

2. RxDC Reporting– Consolidated Appropriations Act of 2021

Spirit of the Law – Understand

RxDC reporting pulls back the curtain on:

- What your plan pays for Rx drugs
- How much is being rebated
- Who is keeping the rebates (PBM, or plan sponsor)

These insights are powerful for:

- **Auditing PBMs**
- **Negotiating better pricing**
- **Demonstrating fiduciary oversight**



2. RxDC Reporting– Consolidated Appropriations Act of 2021

Spirit of the Law – Lower Costs

If you are not getting your RxDC reporting:

1. Get the raw data, have a third party do the reporting.
2. Minimum – Take your “Top 10, 25 or 50” Claims report and benchmark those against:
 - Cash Prices
 - Rebates
 - Fiduciary PBM Costs



3. Gag Clause Attestation – Consolidated Appropriations act 2021

Letter of the Law

The CAA 2021 prohibits group health plans and health insurance issuers from entering into agreements with healthcare providers, networks, third-party administrators (TPAs), or other service providers that restrict:

1. The disclosure of provider-specific cost or quality-of-care information to plan participants, beneficiaries, enrollees, or referring providers.
2. Electronic access to de-identified claims and encounter information for each participant, beneficiary, or enrollee upon request, consistent with applicable privacy regulations.
3. Sharing such information with business associates, as permitted under applicable privacy regulations.

3. Gag Clause Attestation – Consolidated Appropriations act 2021

Penalties for Non-Compliance

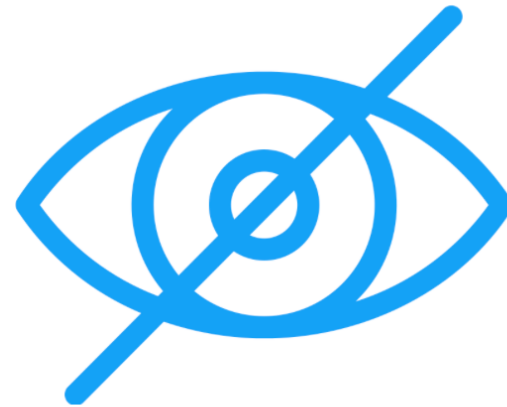
Penalty for Noncompliance: While the CAA does not specify a distinct penalty for failing to submit the GCPCA, the Internal Revenue Service (IRS) may impose an excise tax of **\$100 per day per affected individual** under **Internal Revenue Code § 4980D** for violations of group health plan requirements.

Liability: Even if a third-party administrator (TPA) or other service provider agrees to submit the attestation on behalf of a plan, the **plan sponsor remains legally responsible** for ensuring compliance.

3. Gag Clause Attestation – Consolidated Appropriations act 2021

What We See

- Carriers/Brokers submitting attestation, regardless of existing gag clauses
- No improvement in contract language
- No improvement in claims reporting, access or understanding



3. Gag Clause Attestation – Consolidated Appropriations act 2021

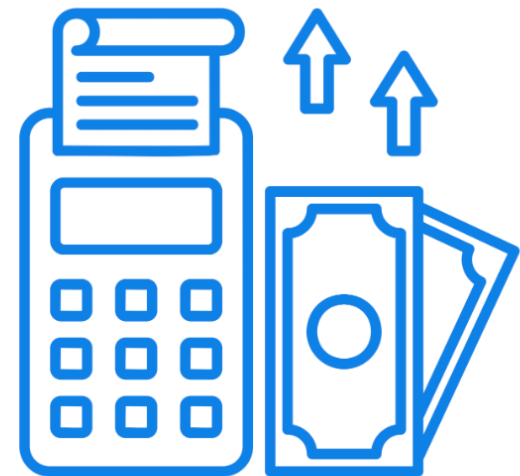
Spirit of the Law – Internal Alignment

18 Claims per Insured employee, per year

$500 \times 18 = 9,000$ Claims

Likely one the largest areas of accounts payable.

Minimum Benefits Committee – CEO,
CFO, HR





Resources

- 408(b)(2) Compensation Disclosure
- Presentation Slides
- Access to the Healthcare Documentary
-





Bryan Orr

Co Owner & Founder

Commercial Construction
and HVAC

300-500 Employees
Clermont, FL



Direct Primary Care

208 Total Members Enrolled in the DPC Option

- 71% engaged with DPC within first 6 months
- ER Visits decreased by 34%, Inline with Benchmarks
- Feedback



Imaging Direct Contracts



Last 6 months, 21 advanced Imaging Services

- Employee Savings \$3,300
- Employer Savings \$9,157
- Ease of use and appointments

PBM Strategies

Fiduciary PBM, MAP/PAP,
International Sourcing

Kalos Rx PMPM – \$17
69.6% Decrease



Claim Example

Taltz – Psoriasis & Psoriatic Arthritis

Step 1 – Clinical Review: 5th drug, drug was approved
\$7,100 Cost, Bi-weekly

Step 2 – no MAP, Mail order international \$3,500 Bi-weekly

Employer Savings \$93,600 , Member Savings \$2,080
(\$0 for members for International)

Network Replacement

Since October 2022

Billed: \$16,730,060

Paid: \$3,226,306

81% Discount



Network Replacement – Claim Example

Skin Graft, Finger

Hospital Pre-Auth – \$81,516

“Discount” 30% – \$57,061

Redirect – Same Physician, ASC: Paid – **\$2,098**

Plan Savings \$54,963

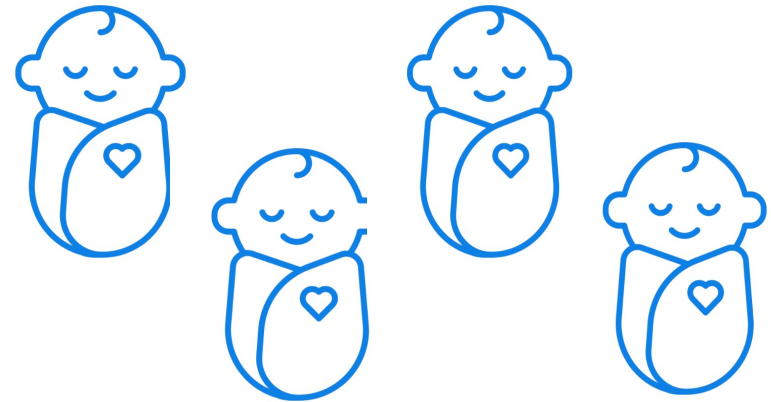
Employee Savings \$4,500 (Max out of pocket)



Network Replacement – Claim Example

Child Delivery –

Pre – Authorization \$37,594
\$13k Medicare
\$18,865 National Average (KFF)

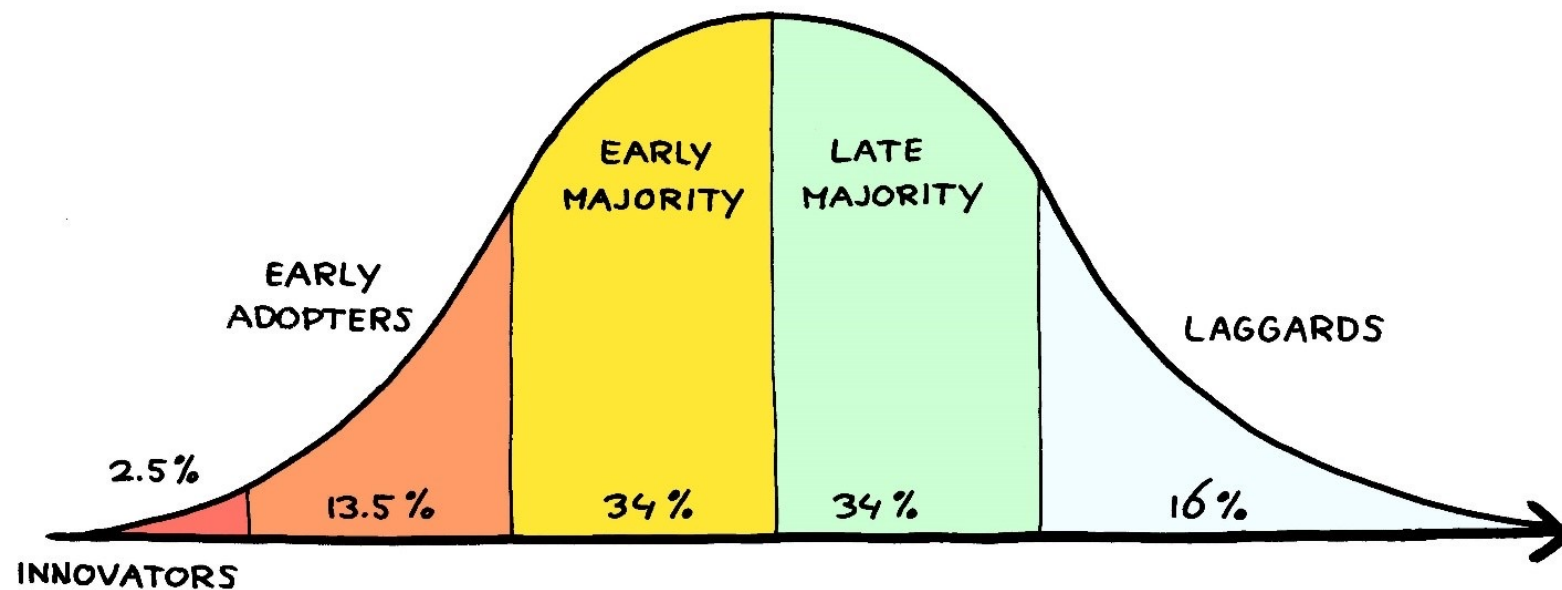


\$18k – Kalos Paid

Healthcare Inflation – Nov. 24 v. Jan 25

Service Items	Previous Cost (November 2024)	Current Cost (January 2025)
Vaginal Delivery Mom and Baby	\$5,000	\$13,000
Vaginal Delivery Mom and Baby – Anesthesia	\$1,050	N/A—included in cost
Vaginal Delivery Mom and Baby – High risk	\$7,000	N/A—all vaginal delivery pricing is the same
Vaginal Delivery converted to a C-Section	\$6,350 (regular price plus addition charge of \$1,350)	NOW EXCLUDED!
C-Section	\$8,000	\$22,000
C-Section—High risk	\$10,000	N/A—all C-Section delivery pricing is the same
C-Section Delivery—Anesthesia	\$1,200	N/A—included in cost

Responsible Health Plan Management





Resources

- 408(b)(2) Compensation Disclosure
- Presentation Slides
- Access to the Healthcare Documentary
-

