



Driving future success

Be Column A[®]



CUSTOM BENEFITS SOLUTIONS

Est. 2006



Agenda

- ✓ ERISA
- ✓ HIPAA
- ✓ GINA
- ✓ RBP
- ✓ PBM
- ✓ Influence

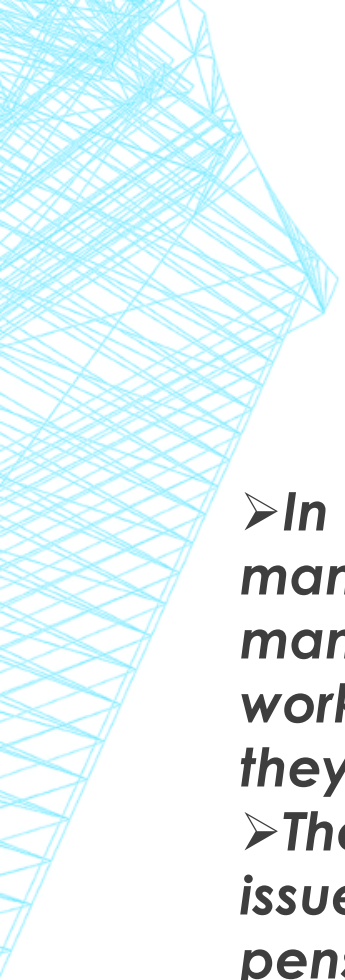


ERISA

<https://www.dol.gov/general/topic/health-plans/fiduciaryresp>

The [Employee Retirement Income Security Act \(ERISA\)](#) protects your plan's assets by requiring that those persons or entities who exercise discretionary control or authority over plan management or plan assets, have discretionary authority or responsibility for the administration of a plan, or provide investment advice to a plan for compensation or have any authority or responsibility to do so are subject to fiduciary responsibilities. Plan fiduciaries include, for example, plan trustees, plan administrators, and members of a plan's investment committee.

The **primary responsibility** of fiduciaries is to run the plan **solely in the interest of participants and beneficiaries** and for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act **prudently** and must diversify the plan's investments in order to minimize the risk of large losses. In addition, they must follow the terms of plan documents to the extent that the plan terms are consistent with ERISA. They also must **avoid conflicts of interest**. In other words, they **may not engage in transactions** on behalf of the plan **that benefit** parties related to the plan, such as **other fiduciaries, services providers**, or the plan sponsor. Fiduciaries who do not follow these principles of conduct may be **personally liable** to restore any losses to the plan, or to restore any profits made through improper use of plan assets. **Courts may take whatever action** is appropriate against fiduciaries who breach their duties under ERISA including their removal.



What prompted the need for ERISA?

- *In December 1963, the Studebaker-Packard Corporation shuttered its manufacturing plant in South Bend, Ind., and it quickly became clear that the auto manufacturer's finances, including its pension plan, were in disarray. Thousands of workers received lump sum payments worth a fraction of the pension benefits they'd earned over their careers. Thousands more received no pensions at all.*
- *The misfortunes of Studebaker's employees drew national attention to a critical issue: the need for pension reform. The danger was clear: Without protection for pensions, workers risked losing the retirement benefits they'd accrued over the course of their working lives. The solution was the Employee Retirement Income Security Act of 1974.*
- *Even though the name doesn't imply; ERISA also covers Health & Benefits*

THE WHITE HOUSE		THE DAILY DIARY OF PRESIDENT GERALD R. FORD		
PLACE DAY BEGAN CAMP DAVID, MARYLAND			DATE (Mo., Day, Yr.) SEPTEMBER 2, 1974 TIME DAY 9:25 a.m. MONDAY	
TIME		PHONE		
In	Out	P=Placed	R=Rec'd	
9:25				The President went to the Camp David helipad.
9:25	9:53			The President flew by helicopter from Camp David to the South Grounds of the White House. For a list of passengers, see <u>APPENDIX "A."</u>
9:56				The President went to the second floor Residence.
10:10				The President went to the Oval Office.
10:22	10:33			The President met with his Military Assistant, Maj. Gen. Richard L. Lawson.
10:34	11:32			The President met with: Arnold Miller, President of the United Mine Workers of America Michael Raoul-Duval, Associate Director of the Domestic Council for Human Resources
11:33	11:38			The President met with his Press Secretary, Jerald F. terHorst.
11:38				The President went to the Rose Garden.
11:38	12:18			The President participated in a signing ceremony for H.R. 2, the Employee Retirement Income Security Act of 1974. For a list of attendees, see <u>APPENDIX "B."</u> Members of the press

ERISA at 40

Did you know?



Despite its name, the Employee Retirement Income Security Act **also protects health and other employee benefits.**

ERISA created a new savings vehicle: the individual retirement account, or **IRA**. In 2012, America's workers held \$5.4 trillion in IRA assets—**28 percent of all U.S. retirement assets.**



EBSA protects about **680,000 retirement plans**, which cover about **141 million workers** and **\$7.6 trillion in assets.**



In FY 2013, EBSA held nearly 1,900 ERISA education and outreach events, and distributed **373,880 educational publications.**

The Employee Retirement Income Security Act is administered by the **Department of Labor**, the **Department of the Treasury** and the **Pension Benefit Guaranty Corporation.**

ERISA gives participants **the right to sue for benefits** and if a key decision-maker doesn't meet the fiduciary standard of care.

About **54 percent of America's workers earn retirement benefits** on the job, and about **59 percent earn health benefits.**

Not all retirement plans are covered by ERISA. **Federal, state or local government plans, for example, are not covered.**

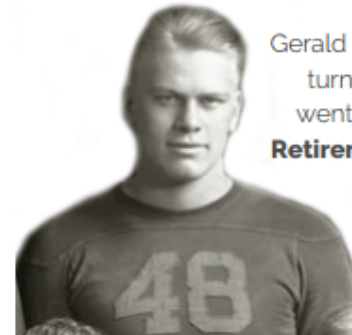
In 1967, Senator **Jacob K. Javits** proposed legislation that would eventually become ERISA.



The **ERISA Advisory Council** meets at least four times a year to discuss issues related to the act and to make recommendations.



Gerald Ford could have played football for the NFL, but he turned down offers from the Lions and the Packers and went into politics. As president, he signed the **Employee Retirement Income Security Act** into law on Sept. 2, 1974.



Before it became the Employee Benefits Security Administration, EBSA was known as the **Pension and Welfare Benefits Administration.**



ERISA

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law
Sets minimum standards for retirement and health benefit plans in private
industry

ERISA does not require any employer to establish a plan

It does requires that those who establish plans must meet certain minimum
standards

Was amended by COBRA (1985) and HIPAA (1996) and ACA (2010)



ERISA

ERISA covers retirement, health and other welfare benefit plans (e.g., life, disability and apprenticeship plans)

ERISA provides that those individuals who manage plans (and other fiduciaries) **must meet certain standards of conduct**

ERISA contains detailed provisions for reporting to the government and disclosure to participants

ERISA has provisions aimed at assuring that plan funds are protected and that participants who qualify receive their benefits



What is ERISA?

Origins

Major component laws: COBRA, HIPAA, MHPA, QMCSO, NMHPA, WHCRA, ACA

Overview of penalties, damages



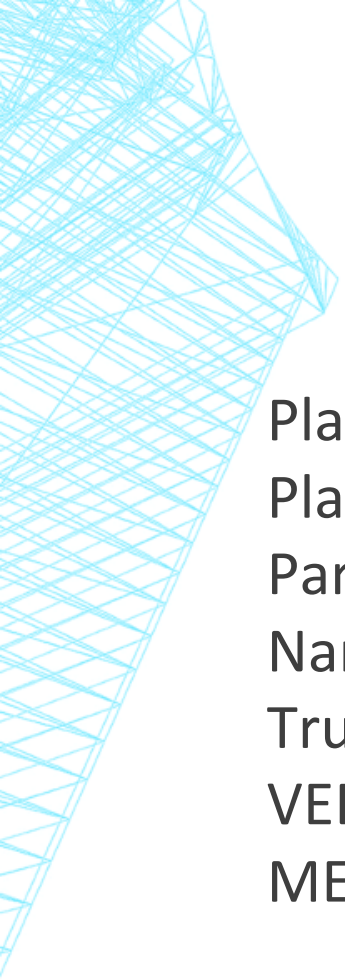
ERISA-Group Health Plan

A written plan that describes the benefit structure and guides day-to-day operations;

A trust fund to hold the plan's assets;

A recordkeeping system to track contribution and benefit payments, maintain participant and beneficiary information, and to accurately prepare reporting documents; and

Documents to provide plan information to employees participating in the plan and to the government



Who are the major ERISA players?

Plan sponsor

Plan administrator

Participants & beneficiaries

Named fiduciary

Trustee

VEBA

MEWA



ERISA-Fiduciary

Actions involved in operating a plan make the person or entity performing them a fiduciary

Status is based on the functions performed for the plan, not just a person's title

The structure of the plan will affect who has fiduciary responsibilities

A plan must have at least one fiduciary (a person or entity) named in the written plan



What plans are subject to ERISA?

- ✓ Major exemptions: governmental plans, Indian tribal government plans, church plans
- ✓ Definition
 - Plan, fund or program
 - Maintained by employer
 - Providing a listed benefit (i.e., medical, surgical, or hospital care or benefits, or benefits for sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, daycare centers, scholarship funds, or prepaid legal services)
 - Must benefit participants & beneficiaries

What plans are subject to ERISA

NO	YES
Cafeteria Plan	Insured major medical
DCAP	HMO coverage
PTO arrangement	Dental insurance
Adoption assistance	Health FSA
Educational assistance	AD&D
STD payments	GTL coverage
	LTD coverage
	Severance payments (probably)
	Voluntary insurance (most likely)



What plans are subject to ERISA

- ✓ Wellness programs
- ✓ EAPs
- ✓ Voluntary plan exception
- ✓ DCAP & Transportation Plans ≠ ERISA Plans



What plans are NOT subject to ERISA (exempt)

- ✓ Most governmental employers and government entities are not subject to ERISA guidelines. <http://www.boomerisablog.com/files/2013/05/Smith-v-Regional-Transit-Authority.pdf>
- ✓ Churches are generally not subject to ERISA guidelines.
- ✓ Benefit plans that are maintained only for purposes of complying with workers' compensation, disability or unemployment laws are not subject to ERISA protections.
- ✓ Unfunded excess benefit plans are not subject to ERISA guidelines.
- ✓ Plans that are maintained outside of the United States and that are intended primarily to benefit non-resident aliens are also not generally covered by ERISA.



What are the major ERISA disclosures?

- ✓ Plan document
- ✓ SPD
- ✓ SMM
- ✓ SBC
- ✓ Form 5500
- ✓ SAR
- ✓ Form M-1 (MEWAs)
- ✓ ERISA component law disclosures (e.g., COBRA, HIPAA, etc.)



Action plan for compliance

- ✓ Work through each plan and determine status under ERISA
- ✓ Identify and fill various roles
- ✓ Write or update all documents and disclosures
- ✓ Determine what laws affect your ERISA plans
- ✓ Get familiar with Form 8928
- ✓ Get familiar with DOL audit and plan ahead



HIPAA



Covered Entity vs. Employer Role

HIPAA Regulations apply to:

Covered Entities

Health plans (including insurers)

Health care clearinghouses

Health care providers (that transmit information electronically)

—HIPAA now applies with equal force to Business Associates and Covered Entities



Covered Entity vs. Employer Role

Covered Entities in their role as an employer do not have to comply

Covered Entities in their role as a health plan do have to comply
Group Health Plans (GHP) must comply (minimal v. full compliance)



Health Plans

Health Plans - Any welfare benefit plan subject to ERISA, except self-funded, self-administered plans with fewer than 50 participants

- Insured and self-insured plans
- Health care vendors, HMOs, PPOs, etc.
- Private sector plans
- Most church plans
- Most government plans (Medicare, Medicaid, Federal Employees plan)
- Medical, limited scope dental and vision plans
- Long-term care plans
- Health FSA
- EAP
- State high risk pools
- HRA



Covered Entity vs. Employer Role

Life

Disability

Worker's compensation

Automobile, property and casualty insurance

Discount plans that do not meet ERISA
requirements

However, information relayed from a non-exempt plan to an exempt plan may be covered.



PHI and its Proper Care

Individually identifiable health information (IIHI) (created or used by the plan)

- Health information - information relating to past, present or future physical or mental health of any employee (active or terminated)
- Individually identifiable - health information that identifies an individual

In the [HIPAA Privacy/Security & HITECH Act Proposed Rule](#) PHI has been modified to exclude an individual who has been deceased for more than 50 years



Covered Entity vs. Employer role

Covered Entities (and their Business Associates) may not use or disclose specific PHI without written authorization

- For research, marketing, etc.
- When acting on behalf of the employer and not the plan

Or, for any other reason than:

- (TPO) Treatment, Payment, or Health Care Operations
- Compliance investigations (federal, state, DHHS/OCR)
- Public health Issues



Business Associates

Business Associates are certain people and groups that work with *Covered Entities* on health-related issues and have access to PHI. *Business Associates* must comply with the terms of a *Business Associate's Contract* and according to HITECH are now viewed equally liable as Covered Entities for Privacy, Security and HITECH.



Business Associates

(Who are they?)

Business Associates can include:

- Other Covered Entities, including insurers
- Third party administrators
- Lawyers
- Consultants and actuaries
- Insurance agents/brokers
- Accountants
- Vendors that use/access PHI
- Other professional and outsourcing relationships:
 - Pharmacy Benefit Managers (PBM)
 - Payroll service vendors
 - HRA and FSA administrators
 - ASPs and other data warehouses



Business Associate

(Contract)

Must agree to following terms and conditions, etc. by:

- Creating policies and procedures to protect PHI
- Training their own staff to understand and comply with guidelines of the contract
- Establishing mechanisms to solve noncompliance issues
- Permitting Covered Entity to audit
- Intending to return or destroy PHI when no longer needed
- Creating safeguards/firewalls to protect PHI
 - Electronic, written and oral communications



Covered Entity

(Identity-plans that see SHI)

Six key requirements

1. Have Business Associates Contracts signed
2. Not require a waiver
3. Provide uses/disclosures policy
4. No retaliation
5. Honor a request for confidential communications
6. Plan amendments may be required



Covered Entity

(Identity-plans that see PHI)

Six key requirements

1. Have Business Associates Contracts signed
2. Adopt plan amendments that conform to the rule
3. Maintain proper records
4. Identify employees or classes of employees who have access to PHI
5. Establish a mechanism to resolve noncompliance issues
6. Training/firewalls/policies and procedures



GINA



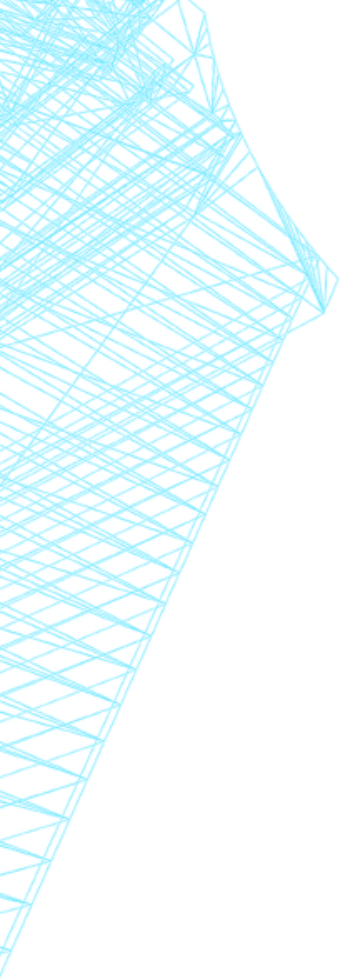
GINA Title I Considerations

Prohibits GHPs from:

- Discriminating against individuals on the basis of their genetic information

- Collection of genetic information prior to or in connection with enrollment or at any time for underwriting purposes

This broad scope does extend to wellness programs



GINA- Definition of Genetic Information

Genetic Information includes information about:

- An individual's genetic tests or that of a family member;
- The manifestation of a disease or disorder in an individual's family member (i.e., family medical history); and
- An individual's request for, or receipt of, genetic services.



GINA- Definition of Underwriting Purposes

“Underwriting Purposes” include:

- Rules for and determination of eligibility;
- Computation of premium and contribution amounts; and
- Application of broader preexisting condition exclusions.

Broad definition, includes:

- Changing deductibles or other cost-sharing mechanisms;
- Providing discounts, rebates, or payments in kind; and
- Other differential mechanisms in return for completing an HRA or participating in a wellness program



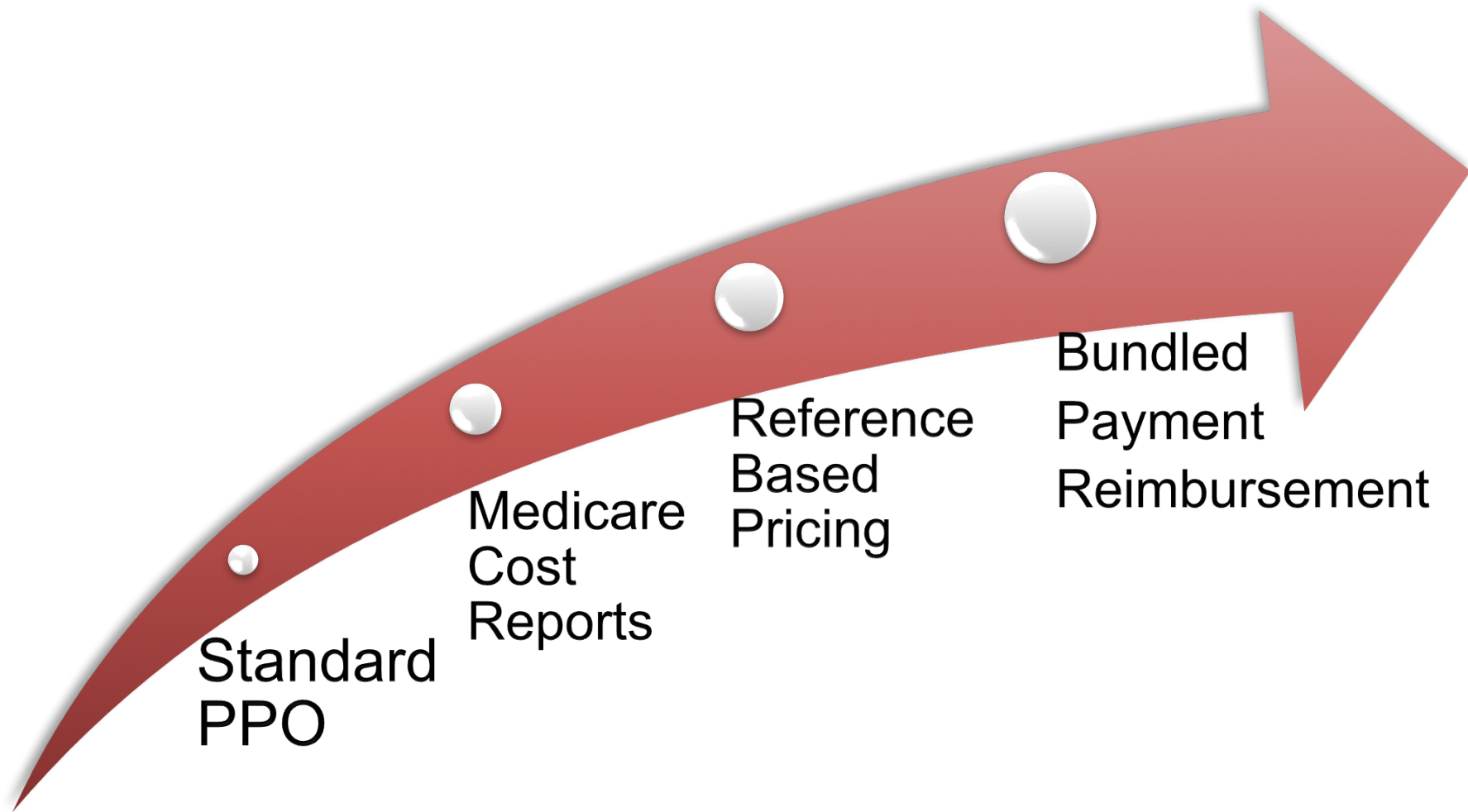
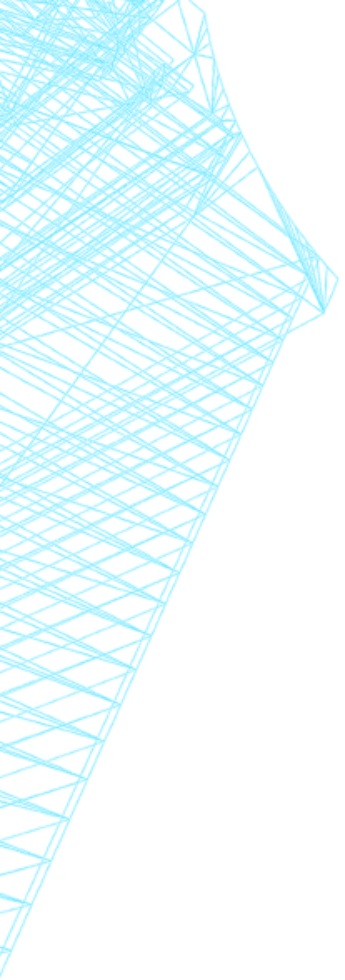
Referenced Based Pricing

YOUR SOURCE FOR

REFERENCE-BASED PRICING



PayerCompass



Evolution of Healthcare Reimbursement

Replacing PPO with RBP

PPO NETWORK

High costs associated with network access, “renting” the network
Minimal discounted percentages off billed charges, set at a premium compared to actual cost of care
Excessive pass throughs
Increased default percentages as a result of codes not passing

RBP PROGRAM

- Better measure of resource consumption by providers
- “Cost Based Care”- related to providers’ actual costs of providing care
- No network restrictions - freedom to choose any provider without Out-Of-Network charges
- Cost predictability, simpler budgeting through a Per-Employee-Per-Month subscription model
- Lower healthcare costs for employers
- Savings of 30 – 40% less than typical PPO Networks and 15 – 20% lower than Carrier Networks

Employers annual spend for health insurance continues

to rise
\$18,000/yr



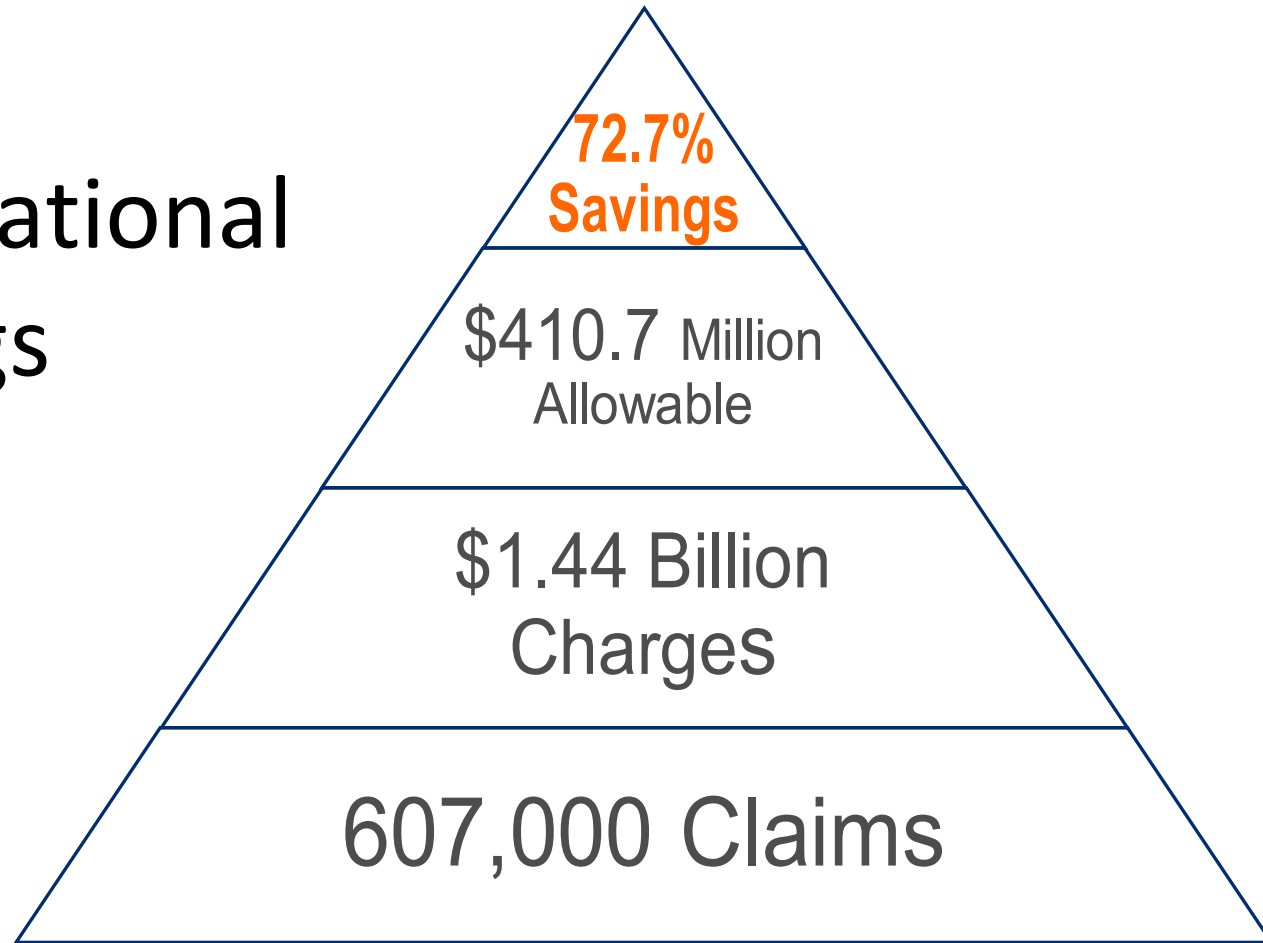
Outweighing the antiquity of network plans, Reference-Based Pricing stacks higher in plan, cost and care advantages



Why Medicare Plus a Percentage?

- Standard payment system for all providers
- Majority of providers already accept Medicare
- Based on cost
- Still allows providers a margin
- Recognized as reasonable pricing by legal entities and regulations

RBP National Savings



*Based on data from
Payer Compass
clients from
01.01.16 – 12.31.16*



Example of good PBM partner



The Consumer-Driven Pharmacy Benefit Management
Company™

In a galaxy (not too) far away...

80% of the market is dominated by 3 un-aligned PBMs



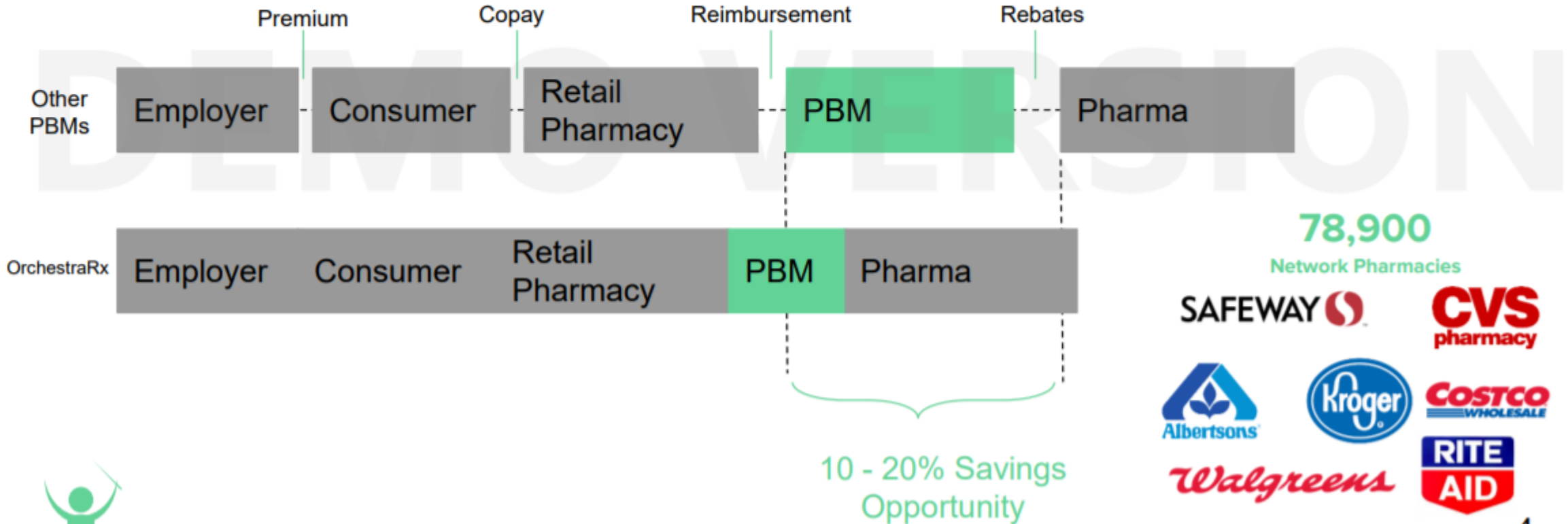
Health Plans, Employers, and people struggle with rising cost, lack of options, virtually “zero” transparency, and data visibility concerns.

OrchestraRx pharmacy solutions platform
saves on average 20%



PBM: How it works

OrchestraRx creates a more **aligned relationship** between the retail pharmacies & the health plan consumer.



Who are we?

Louisville, KY HQ

Transparent prescription drug management company

You get 100% of rebates

No mark-ups or price spread

Deep analytics chassis drives competitive pricing

Innovative and flexible solutions that promote

consumerism, cost containment and diligent patient

management

Revenue based on fees only!

78,900
Network Pharmacies



Reference Based Pricing (RBP) Program

Our industry leading “member pays the difference” logic enables a consumer experience that creates optimized drug choices at the therapeutic class level that meets individual consumer needs.

Our program delivers targeted communications of savings opportunities and options to switch drugs to low cost alternative, buy-up to more expensive drug, or receive a medical necessity waiver to receive same drug at same copay.



\$100 - \$281
Savings per
Script



\$33

nabumetome
500mg
(30 days)

Confidential & Proprietary

A

\$138

misopostol/
diclofenac
sodium
200mcg/25mg
(30 days)

B

\$314

Celebrex
50mg
(30 days)
Pharmacy A

C

\$209

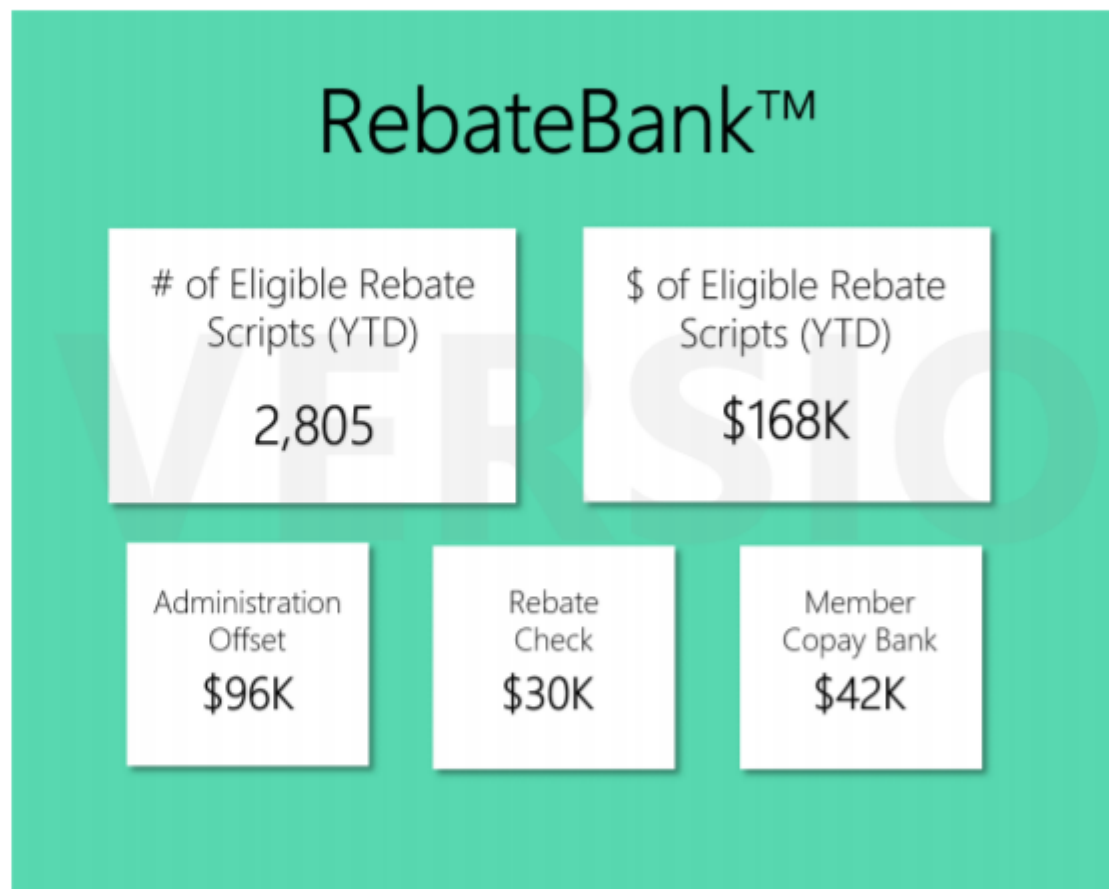
Celebrex
50mg
(30 days)
Pharmacy B

D

14

RebateBank™

Patent Pending technology that transparently shows the plan administrator in a rebate statement how much in rebates they are earning and then allowing them to use that money to offset admin cost, go back to the bottom-line, or provide member rebates/HSA contributions tied to making smart choices with their doctor



RxOptions™ (3Q18)

Pre-purchase Rx options for future Rx utilization.

Contracts can be purchased and sold via OrchestraRx marketplace.

Save on tomorrow's cost, buy purchasing at today's rates (derivative).

Blockchain enabled.



Opioid Management

Blockchain Enabled “Amber Alert” for Opioid users so pharmacies in a geographic radius are alerted and script fulfillment is disabled to curb abuse, fraud and waste.

DEMO OVERSION





Influence vs. Influential

Do you influence or are you influential?



INFLUENCE	INFLUENTIAL
External Event	Internal Process
Title	Testimony
This is About "Them"	This is About "YOU"
Making a Change	Creating a Shift
State of "Doing"	State of "Being"

"Being influential is a higher order of influence. If you have influence, you will not always be influential. However, if you are influential, you will always have influence."

-Influence: What's the Missing Piece? Karen Keller author (Amazing book & thought leadership)

Keller's Seven Influence Traits[®]



Keller's Five Organizational Competencies™



The most critical areas of skill development and behavioral change in an organization.™

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Be Column A®

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