Testimony of Tom Doney

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Hearing on Section 408(b)(2) – Fee Disclosures to Welfare Benefit Plans

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Good morning, my name is Tom Doney. I am President of Cypress Benefit Administrators, a Third Party Administration firm and a member of the Society of Professional Benefit Administrators (SPBA). The Society of Professional Benefit Administrators (SPBA) is the national association of independent Third Party Administration firms (TPAs) which manage client employee benefit plans. It is estimated that 55% of all non-federal U.S. workers and their dependents, from every size and format of employment, are covered by employee benefit plans managed by such TPA firms.

SPBA member TPA firms operate much like independent CPA or law firms, providing professional outside claims and benefit plan administration for multiple client employers and benefit plans. Many of the plans include some degree of self-funding. SPBA represents a wide range of benefit plans, including small business, large corporations, union, non-union, municipalities and association-sponsored plans.

1. Why a rule addressing the transparency of fees related to health plans is needed.

I agree with the Department's assessment noted in the July 16, 2010 Interim Final Rule on ERISA Section 408(b)(2) that a separate and more specifically tailored disclosure rule for welfare benefit plans is needed. I understand that one of the goals of the disclosure rule is to provide comprehensive and useful information to plan sponsors when entering service contracts to enable them to assess the reasonableness of the fees paid for services. While health plans currently disclose much of what the Department envisions, there are certain areas of the market where transparency does not presently exist. A tailored rule would provide a more level playing field in the industry and assist plan sponsors in understanding what they are actually paying for services rendered.

2. The market realities of the disclosure of fees in placing fully insured policies and self-funded arrangements.

Please understand that I view the role of the employee benefit consultant (which includes insurance agents and brokers) as an important and valuable asset to companies offering employee benefits. There are many examples of good work being done by employee benefit consultants and, in my opinion, it is right that the consultant be remunerated for the work they do for their clients. However, I have also seen examples of payments to consultants, particularly from large, national insurance companies, sometimes in large amounts, that are not disclosed to clients. Additionally, my concern (and that of many in my industry) is that the prospect of big payments from carriers to consultants can skew their recommendations to clients with respect to what administrator or carrier the client should be utilizing for employee benefits administration. My own TPA has, in many circumstances over the years, provided quotes to brokers & consultants for a client of theirs that was very price competitive and/or significantly less expensive, but the consultant never presented our quote to their client to assist them in fully considering their options. My conclusion in many of these circumstances is that the consultant made their recommendation not based on what is best for their client, but rather what administrator or carrier would pay them the most for their business. Indeed, in a private conversation with an employee of a large Wisconsin-based insurance agency I was told that the consultants at the agency were instructed by the managing partners to place all business possible with one particular carrier due to the commission and bonus policies of that carrier, not because of price competitiveness or service advantages.

Consultants generally disclose the commission payments made to them by administrators and insurance carriers. The problem, though, as I see it is that it's not necessarily the individual group commissions that a consultant receives from a carrier, but rather the overall bonuses and overrides they receive on an entire book of business with a particular carrier. For example, a major national insurance carrier offers Wisconsin consultants a bonus of up to $12 per enrolled employee on an overall block of business, not specific to one individual employer. Additionally, if the consultant retains that level of business for a second year and increases that block by as little as 25%, they will get an ADDITIONAL bonus of 150% of the original amount. So if a consultant brings 10 groups to this carrier with 400 employees each, an initial bonus of $48,000 is paid to the broker that year. Then if the consultant's entire block of business with the carrier at the end of year two is 5,000 employee lives (say, those 10 groups plus an additional 4 groups with 250 employees each), an additional bonus of $72,000 is paid on that block. And those bonuses are in addition to the typical upfront consultant fee (usually $2.00 - $2.50 per employee per month) and stop loss insurance commission (usually 10% of stop loss premiums) that is almost always paid to them on a self funded case. In this example, the consultant would have been paid $430,000 in commissions and bonuses over a two year period for placing 14 cases with a major health insurance carrier, $160,000 of which would not typically be disclosed to a client.

So I can see a consultant disclosing the stop loss commissions and per employee per month fees to an individual group (and that often happens today), but how does one disclose to one particular group a $48,000 or $72,000 bonus that is paid to them as a result of having many employer clients with many employees placed with a carrier? I would submit that these types of bonuses and overrides are absolutely

not disclosed to individual clients because it would be difficult to accurately determine how much is attributable to an particular employer (the easy answer is to say, "well, if you get $48,000 for 4,000 employees, just divide your overall compensation by the number of overall employees and multiply by the number of employees I have to get a compensation amount", but bonuses are often paid on a sliding scale based on an overall book of business that gets calculated from time to time, so it's difficult to attribute a certain dollar amount to a certain group if the -per employee compensation scale changes regularly. And I suspect that a consultant is not particularly motivated to disclose anything to any client other than that which can be directly attributed to a specific employer, such as per employee per month fees and stop loss commissions). So, as a way to gain more business, the savvy consultant could actually tell the employer that he's going to just charge them a "consulting fee" and will waive all commissions, while he reaps the rewards of receiving a huge bonus from a carrier based on an aggregated block of business, not predicated on an individual employer's enrollment.

It should be made clear at this point that the circumstances wherein a consultant is a part of an agency or consulting firm, the consultant is typically responsible for sharing their commissions and bonuses with their agency employer. Not in all circumstances does the consultant retain all payments made by carriers for business written.

My point is that the proposed regulations that I have seen seem to revolve around the compensation one gets from enrolling an individual employer. That doesn't come close to telling the entire story when it comes to consultant compensation.

I am in no way interested in denying an employee benefit consultant or their firm the opportunity to make as much money as they reasonably can from the important work that they do for employers. I do, however, believe that an employer, whose employee benefit costs are second only to payroll, be completely aware of what they are paying, because in fact it is the employer who ultimately foots the bill not just for their employees' claim costs but for the administrative fees and miscellaneous compensation that is a part of their benefit plan. I would suggest that in future guidance published there be an example of how the Department envisions bonuses and commissions for placing business across a consultant's entire block be disclosed to clients. I believe full disclosure of all compensation under both self funded and fully insured plans to be a critical part of the decision making process for employers and that only when an employer fully understands what goes in to all of their benefit costs will there be a level playing field for TPAs and carriers who rely so heavily on consultant representation to clients.

3. Why the Form 5500 Schedule A is not sufficient disclosure.

Other trade groups have asserted that additional disclosure rules are unnecessary for fully insured plans because adequate disclosure under ERISA already exits, specifically the Form 5500 Schedule A. The Schedule A does not serve the goals of section 408(b)(2): to assist plan sponsors in assessing the reasonableness of fees paid for services. The Schedule A is issued after the end of the plan year, and long after the plan sponsor has made a decision to select a particular service provider. And, candidly, not all fees are consistently disclosed to the employer, making it impossible for them to report correctly on Schedule A.

4. Why fully insured plans should not be exempted from 408(b)(2) because these plans are subject to State insurance laws.

I believe that most State insurance laws do not require the types of disclosures addressed under the 408(b)(2) proposed rules. If there are some State insurance laws addressing similar disclosure issues, it appears they are loosely enforced, given that fully insured plans are currently less compliant with the spirit of 408(b)(2) than self-funded plans.

5. Conflict of interest disclosures.

Finally, I have reviewed the Interim Final Rule with respect to Financial Disclosures with respect to Pension plans in the July 16, 2010 Federal Register. I understand that you are interested in pursuing the same or similar rules as it regards welfare plans. Many commenters on the proposed rule expressed objections to the conflict of interest disclosure obligations requiring narrative descriptions of potential conflicts of interest. In the interim final rule for pension plans, the Department adopted a different approach focusing on more detailed disclosure of compensation arrangements. We encourage the Department to apply this same approach to welfare plans.

Thank you for your time this morning. I would be happy to answer any questions you may have.