2026 SUPPLEMENTAL HEALTH, DI AND LTC CONFERENCE

Navigating Change

Captives, Alternative Risk, and ERISA: Opportunity or Exposure?

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Dennis Leclair

Managing Member & Founder

ClearPath EBC LLC

Stacey Hunter, FSA, MAAA

Chief Actuary

BeneRe

Kristi Hardenbergh, FSA, MAAA

Consulting Actuary

Sydney Consulting Group

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Alternative Funding Arrangements

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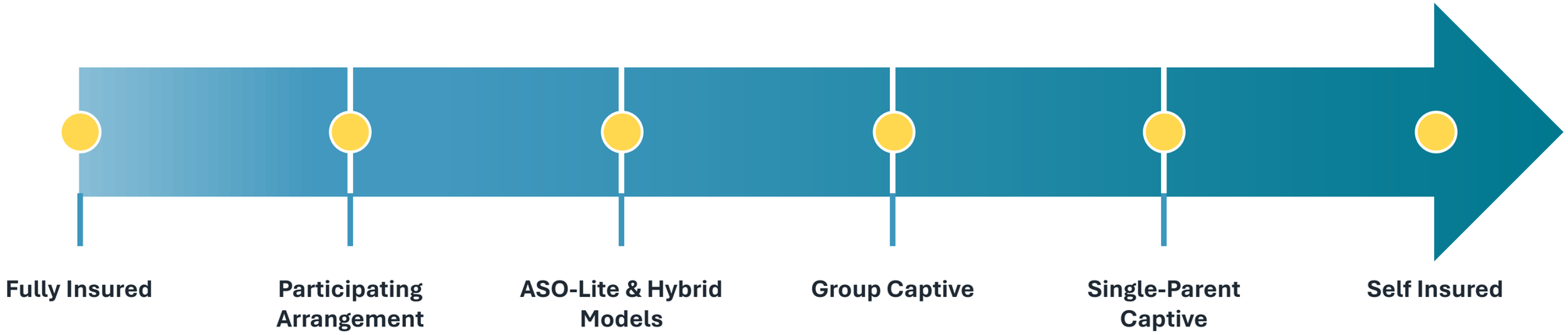
The Alternative Funding Continuum



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Advantages of a Fully Insured Model

1. Easy to explain
2. Carrier assumes the underwriting risk
3. Renewals are straightforward
4. Administrative simplicity
5. Predictable premium and budgeting
6. No need to manage expectations of refunds

Why Alternative Funding?

1. More transparency in claims data
2. Allow employers to share in favorable claim experience
3. Allow employers to have more visibility into cost drivers
4. Increase flexibility
5. Differentiate benefit strategy
6. Improve long-term sustainability

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Participatory Arrangement

Arrangement allows employers to share in favorable financial results while the insurer retains the underlying insurance risk.

1. Risk remains with the carrier
2. Potential for experience refunds and dividends, though not guaranteed
3. Simplified implementation
4. Limited regulatory complexity
5. May require a minimum participation or premium level
6. May not be as transparent or flexible as other arrangements

Experience-Rated (Refund Based)

How it Works:

1. Employer group pays premiums
2. If claims are lower than expected, a portion of the surplus is returned
3. If claims are higher than expected, no refund, but usually no charge
4. Refund is typically offered annually (or periodically)

Best fit for mid-to-large employer groups that want to benefit from positive claim experience with minimal downside risk

Dividend-Paying Arrangements

How it Works:

1. Carrier declares non-guaranteed dividends
2. Often based on block, case, or mutual company experience

Advantages	Limitations
Simple to administer	Less transparent
Familiar contract structure	Dividends not guaranteed

ASO-Lite & Hybrid Funding Models

Employer Responsibilities	Carrier Responsibilities
1 Partial or Full Claim Funding	1 Administers claims
2 Benefit Strategy	2 Product compliance
3 Financial Participation	3 Customer service

Best for large employers seeking maximum control of their benefit offerings while maintaining downside protection.

Captives

Single-Parent Captive

1. Insurance arrangement for a single corporation
2. Typically used for P&C coverages and medical stop loss
3. Voluntary benefits are typically restricted as a conflict of interest under ERISA
4. US Department of Labor (DOL) would need to grant an exemption

Multi-Employer / Group Captive

1. Removes the conflict of interest by pooling multiple employer groups
2. Product insured by carrier and captive reinsures the risk

VB Group Captive Model

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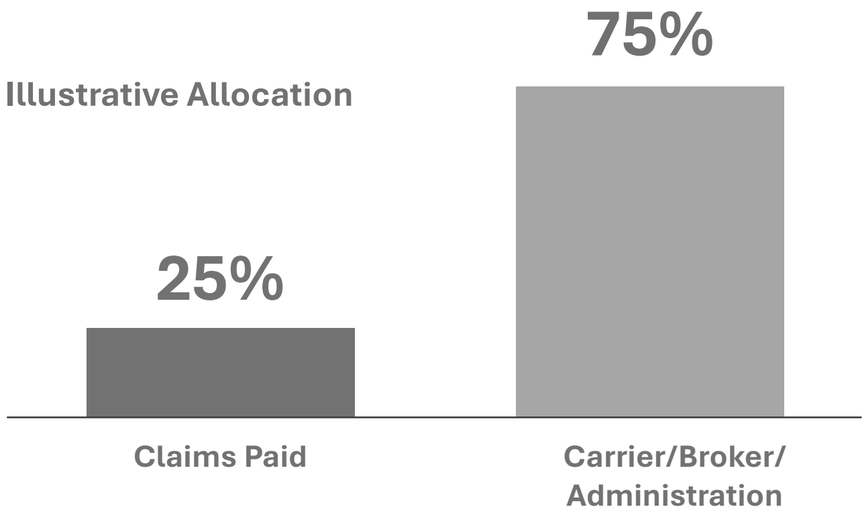
Traditional Model vs. Captive Model Example

Characteristics vary by carrier, funding arrangement, and plan design.

Traditional Funding

- Claims reporting determined by carrier
- Financial reporting varies by arrangement
- Employer generally has limited visibility into premium allocation



Group Captive

- Participating employers may receive detailed financial reporting
- Premium allocation and claims performance are shared with members
- Surplus, when generated, may be returned according to the captive structure

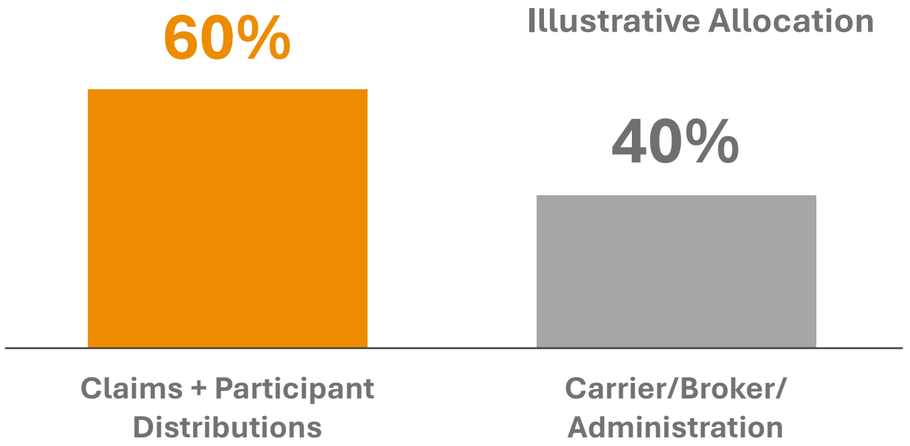


Illustration reflects one example of a group captive structure.
Actual allocations vary by carrier, program design, and claims experience.

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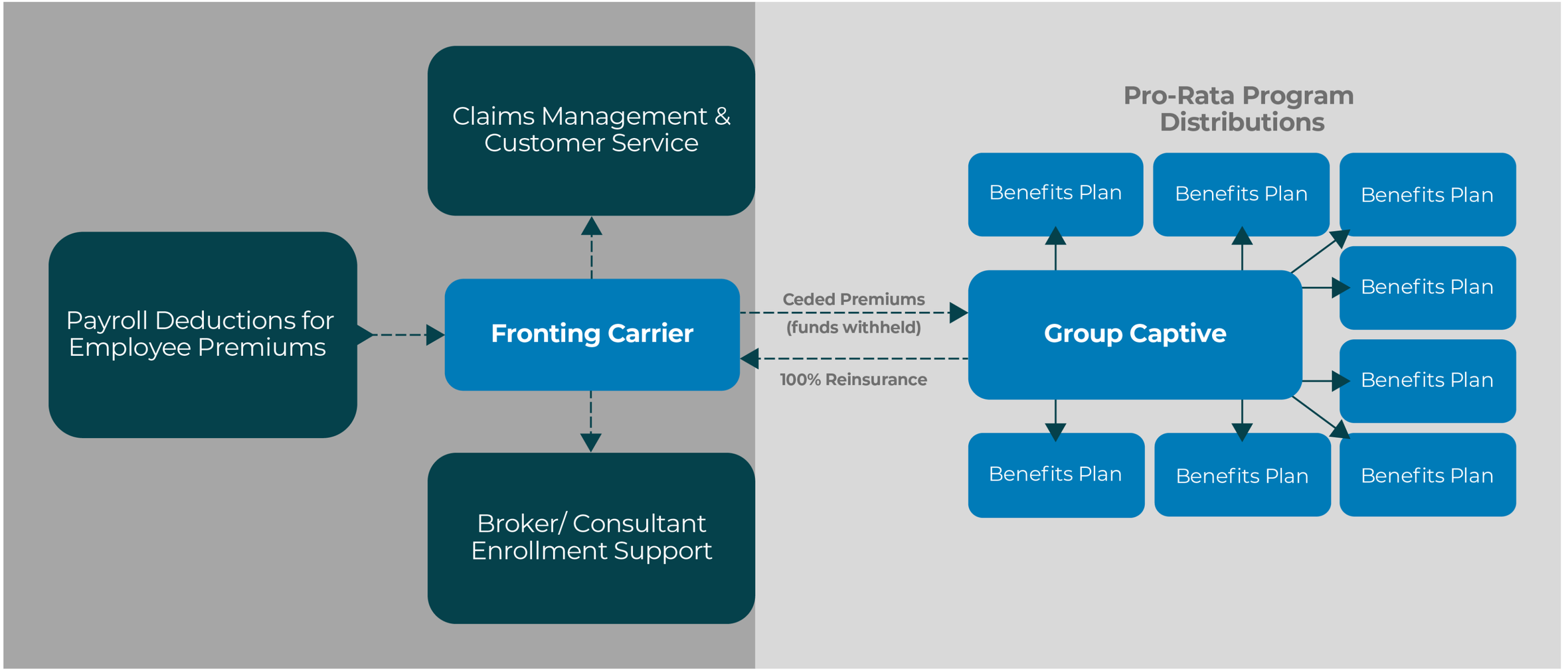
Group Captive Model Example



The fronting carrier is obligated to pay every employee claim, no different from a fully insured program.

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Financial Transparency in a Group Captive

This example illustrates one approach to financial reporting within a group captive. While reporting formats and premium allocations vary by carrier, captive structure, and state requirements, the objective is to provide participating employers with greater transparency into how premium dollars are allocated and how the program is performing over time.

60%

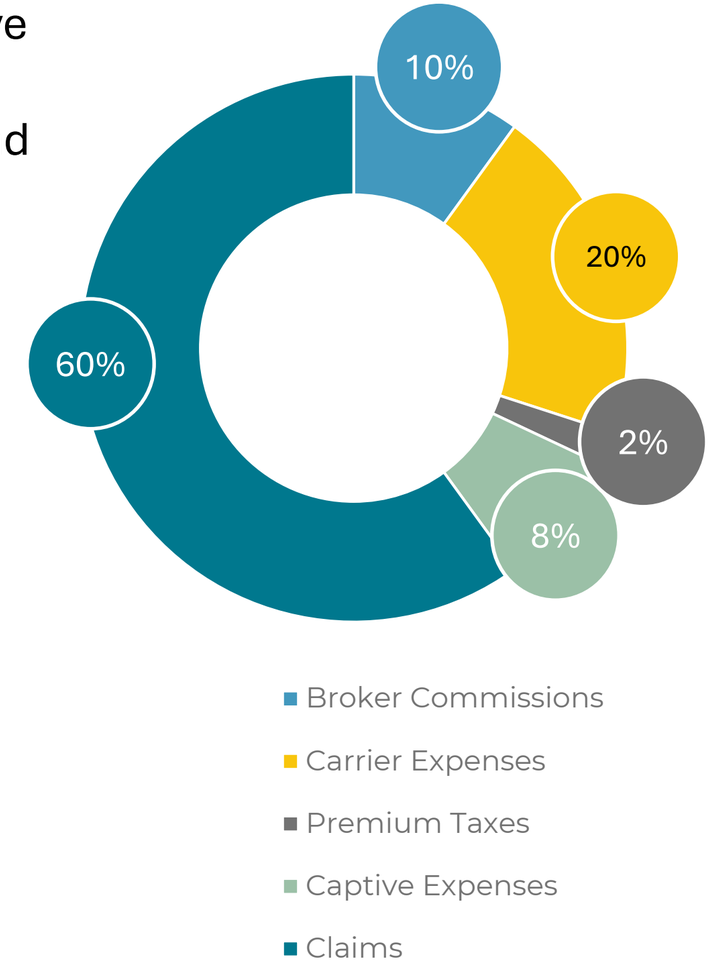
Claims

- Illustrative Claims Funding
  The amount of claims payments paid or approved year-to-date
- Premium Reserve: The dollar amount remaining for claims payments
- Claims Ratio: The percentage of claims incurred in relation to the premiums earned (total payments/premium)

40%

Program Expenses

- Broker Compensation: Allocation for broker services
- Carrier Expenses: The amount of premium allocated to the carrier for administration, claims processing, and profit
- Premium Taxes
- Captive Expenses/Administration
- Claims Funding & Reserves



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Illustrative Use of Captive Distributions

When program experience is favorable, surplus may be available for reinvestment in accordance with the captive structure and applicable ERISA requirements.

Practical Examples:

Strengthen Employee Benefits

- Enhance existing supplemental health benefits
- Introduce new voluntary or employer-paid benefits
- Expand employee financial protection

Reduce Plan Costs

- Offset future employee premiums
- Support wellness or health plan initiatives
- Help fund eligible plan expenses

Support Fiduciary Objectives

- Reinvest value back into the health and welfare plan
- Improve transparency around benefit dollars
- Demonstrate participant-focused use of plan assets

Actual use of distributions depends on plan governance, applicable ERISA requirements, and the terms of the specific captive arrangement.

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ERISA

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ERISA

Does ERISA Matter for Supplemental Health?

The **Employee Retirement Income Security Act of 1974 (ERISA)** is a federal law that establishes minimum standards and protections for participants in private-section employee benefit plans. Most Supplemental Health plans are subject **ERISA** unless a specific exemption applies (e.g., government or church plans).

Supplemental Health products are designed to support ERISA compliance; however, employers should consult their legal and/or benefits advisors regarding their specific ERISA obligations.

Most employer-sponsored Supplemental Health plans are considered to be subject to ERISA unless they qualify for the regulatory "**safe harbor**" exemption.

ERISA–Safe Harbor Exemption

To be exempt from ERISA, **ALL Four** Conditions Must Apply:

- Funded entirely through **after-tax employee contributions.**
- Employee participation is **completely voluntary.**
- Employer involvement is limited to:
  - Allowing the insurer to publicize the program
  - Collecting premiums through payroll deduction
  - Remitting premiums to the insurer
- Employer receives **no compensation or consideration**, other than reasonable reimbursement for administrative services.

Source: ERISA Safe Harbor Regulation – 29 CFR §2510.3-1(j)

Key Compliance Considerations:

Employer Endorsement: The most common issue is whether the employer has **endorsed** the program.

Courts have generally found endorsement when an employer:

- Promotes/recommends participation
- Presents the coverage as an employee benefit
- Selects the insurer
- Determines plan design or coverage options
- Actively markets the program to employees

Bottom Line: Significant employer involvement may cause a Supplemental Health plan to be treated as an ERISA-covered benefit, eve if employees pay the premiums.

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Considerations When Entering Captive Arrangements

ERISA Implications of Captive Insurance Arrangements:

What insurance carriers should clarify, document, and avoid when supporting employer benefit plans

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AGREEMENT MAP

Common Legal Agreements

Typical captive arrangements rely on four agreement clusters. Use them to clarify roles, risk, and value flow.

1 Employer-captive

Participation agreement

Membership, capital, risks, and surplus/deficit treatment.

2 Captive governance

Operating agreement

Voting rights, board structure, and dispute process.

Indemnity agreement

Member obligations for shared risk and shortfalls.

3 Insurance policies

Supp health policy

Coverage, claims processing, adjudication, and payment.

Reinsurance treaty

Carrier cedes risk to the captive.

4 Captive Carrier Panel Agreement

General Participation Terms

Administration, compliance, and financial reporting.

A clean agreement map helps fiduciaries see who does what, who takes risk, and where economic value flows.

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WHY IT MATTERS

ERISA Can Turn Captive Economics into a Fiduciary Question

1. **TRIGGER** — Employer-sponsored benefit coverage can bring ERISA duties into the discussion.
2. **SCRUTINY** — Review often centers on plan assets, parties in interest, and who receives value.
3. **SUPPORT** — Transparency helps fiduciaries document a reasonable process.

Make economics easy to verify.

Support the fiduciary record with clear documentation, not just pricing.

Simplified Message: Be clear about dollars, value, and fiduciary support.

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ERISA WATCHOUTS

Watch for Party-in-Interest Value Transfers

The issue is not the captive by itself; it is whether plan assets create value for an employer-related party.

Statutory baseline

ERISA Section 406(a)(1)(D) bars use of plan assets for the benefit of a party in interest.

Where scrutiny increases

Employer / broker as party in interest

Employer-sponsors are parties in interest; recent litigation also targets brokers in non-captive relationships.

Self-dealing concern

Risk rises when a fiduciary steers plan activity into an arrangement that benefits its ownership interest.

Practical implication: show how value flows to the plan or participants—not to the employer, broker, or captive.

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RISK FRAMEWORK

A Three-Question Decision Path

Risk rises when plan-related dollars create value for a party in interest without a clear participant benefit.

1 → 2 → 3

Dollars

Where do premiums, fees, reserves, underwriting gains, and investment gains flow?

Recipient

Who receives the value: employer, captive owner, plan, employees, or vendors?

Benefit

How are participants better off through cost, coverage, administration, or plan support?

Explanation should make the flow of funds and intended employee benefit easy to follow.

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FIDUCIARY SUPPORT

Build a Concise Fiduciary File

All parties should be able to point to the same compact evidence set—roles, economics, value, and monitoring.

FILE PRINCIPLE

Short, comparable, current.

A useful record shows why the arrangement is reasonable without forcing fiduciaries to reconstruct the story later.

Evidence to keep current

1. **Role and compensation**
   Services, fees, responsibilities, and decision owners.
2. **Market check**
   RFP inputs, benchmarks, and comparable alternatives.
3. **Economic transparency**
   Premiums, reserves, claims, expenses, and gain sharing.
4. **Participant rationale**
   How the plan or employees receive value.
5. **Monitoring record**
   Reporting cadence and reassessment over time.

Make the review process easier to defend, not harder to explain.

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COMPLIANCE ANCHOR

Participant Value is the Anchor

The most defensible arrangements show how excess value benefits the plan or employees.

Document participant value in specific, measurable terms.

Lower contributions

Reduced employee share of benefit cost.

Richer coverage

Expanded or improved benefits for participants.

Better administration

Claims, service, or access improvements.

Plan-expense support

Value returned to the plan or used for plan costs.

Avoid positioning the captive primarily as employer cash flow or captive-owner profit.

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Appendix: About BeneRe

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BeneRe – Who We Are

BeneRē: Redefining Voluntary Benefits

Founded in 2018 | Domiciled in Scottsdale, AZ

The first and largest group captive voluntary benefits model.

2019

3 Employers

35K EEs

2026

210+ Employers

2M+ EEs

99%

Client Retention

proving long-term value and satisfaction

Core Values

- Innovation
- Partnership
- Transparency
- Integrity
- Family

Market Leading Carrier Partners

VOYA FINANCIAL

TheStandard

securian FINANCIAL

$63M+

Employee

Cost Savings and Claims Increases

$52M+

Distributions

returned for benefits reinvestment

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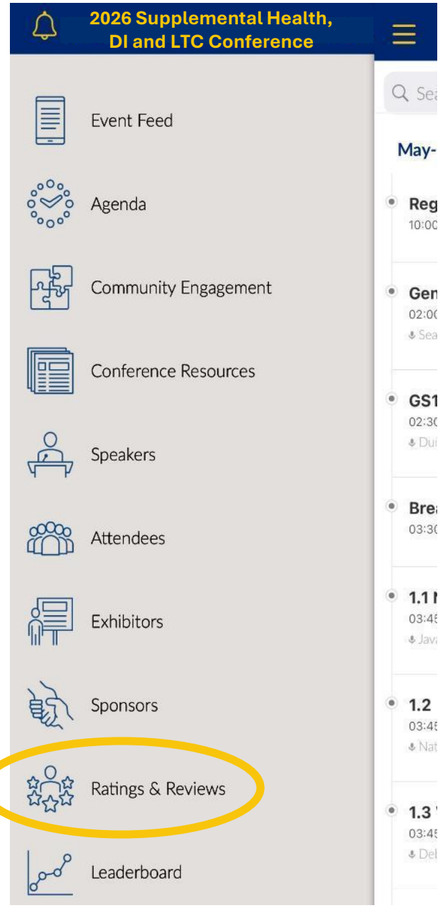
BENERē

We Value Your Feedback — Share It in the Conference App

Module Option



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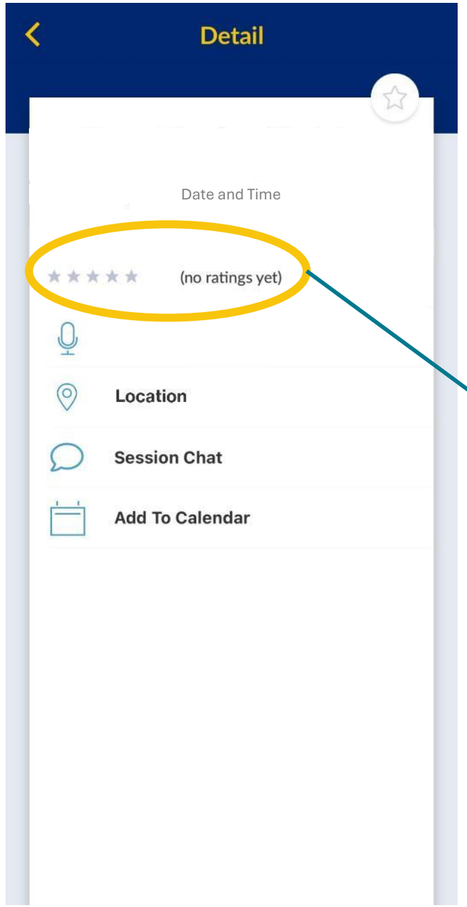

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Thank You

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