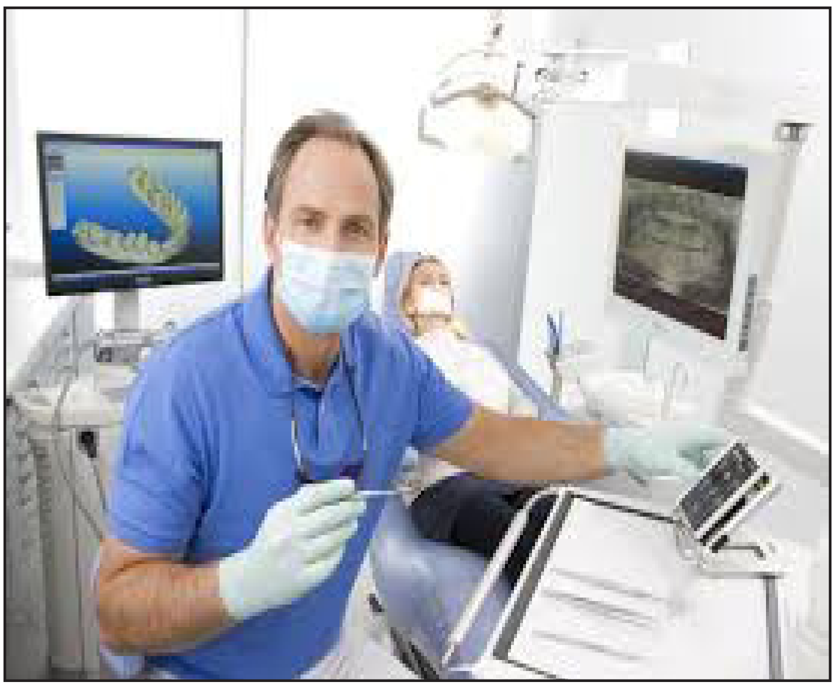
# Why a Plan Review Shouldn't Be Treated Like a Trip to the Dentist

By Ary Rosenbaum, Esq.

When it comes to their health, people dread going to the dentist. I dread going to the dentist and I only have one cavity. What gets people afraid of the dentist is the fear of the unknown, that somehow they will discover the need for a bridge or a root canal that will cost thousands of dollars and more importantly, a lot of pain. Plan sponsors treats reviews of their plan like a trip to the dentist and it doesn't have to be that way. A plan review can help root out issues that could be problems later down the line. This article is about why retirement plan sponsors shouldn't treat their plan reviews like a trip to the dentist.



**It's worse than having bad teeth**

When you refused to go to your dentist and you end up having severe problems with your teeth, that's your problem because it's your teeth and mouth. Plan sponsors who refuse to have their retirement plan reviewed don't have that luxury because they are responsible for other people's money. As a retirement plan sponsor, you are a plan fiduciary and when you are responsible for other people's money (your employees' money), you have to do a better job in holding that money than how you hold your own money. Fiduciary is the highest duty at law and in equity; so avoiding that plan review isn't as simple as it sounds.

**Some plan problems are as invisible as plaque**

I once joked that dental plaque is nonsense developed by dentists because people were taking better care of their teeth thanks to affordable dental products and fluoridated water. However, dental plaque is a biofilm that form over teeth formed from bacteria that if untreated, becomes tartar, Plaque can cause cavities, but more importantly, it can cause periodontal issues like gingivitis and periodontitis. A lot of plan problems are often invisible to the eye of the non-retirement plan professional, so often problems are discovered when there is a plan review or most likely, when there is a change of plan providers. As a veteran of third party administrators (TPAs), I can attest that most plan errors are usually discovered during the conversion process when a plan switches TPAs. This is the period of time where I jokingly say "that this is the time we find the buried bodies". A plan sponsor who thinks that their plan is in tip-top shape may find that thought was grounded in fiction upon the discovery of plan errors. Incorrect testing results, plan documents that don't correspond to plan operation, required plan amendments not done, incorrect contribution allocations, and untimely amendments are just some of the errors spotted in the conversion process. So if a plan sponsor never changes their plan provider, they may never know what kind of troubles that their plan has until there is an Internal Revenue Service (IRS) or Department of Labor (DOL) audit. The problem with mistakes found on an audit is that the penalties for a plan sponsor's non-compliance is far greater than if the plan sponsor self corrected or voluntarily submitted the plan to the IRS for correcting those errors. I had a poor client being sued by the DOL because the plan's actuary prepared no valuation reports, so there was nothing proving that the benefits paid out actually belonged to the plan sponsor's owner. A good plan review can spot out errors that may never be discovered until it's too late.

**It isn't the job of an audit to find errors**

For plans that have more than 100-120 plan participants, there needs to be an independent audit to attach to the annual Form 5500. The audit does a lot of things, but it may not get all the plan errors to surface to the top. The reason for having an audit is to render an opinion on the financial health of the plan and if it presents fairly all-material aspects of the financial status of the plan. During the audit, auditors try to ensure that the retirement plan is in compliance with both government regulations and requirements specified within the plan documents. Auditors are fantastic when it comes to determining the financial health of the plan and ensuring that the assets are where the plan sponsors says they are, but it should never be mistaken as an in-depth, overall review of the plan. There are many plan compliance errors that an audit will fail to reveal and there are inept auditors that may not find an error that is staring them in their face. Never mistake an audit as a full in-depth plan review.

**Things change, just like your teeth**

When you actually do go for that annual or six-month dental checkup, they always set you up for an x-ray to see if there is any change to your teeth because teeth are like anything else, they can change over time. Retirement plans consistently change thanks to the size of plan assets, demographics of the employee census, and the financial health of the plan sponsor. What might have been a good plan or having a specific plan provider when the plan was first created may not be the same when the plan hits a certain financial or employee milestone. A defined benefit plan you had when you had you and your wife as the only employee probably no longer makes sense when you start hiring non-family members. If you could afford employer contributions, you might want to add a new comparability allocation to your 401(k) plan. An influx of rank and file employees as plan participants could negatively impact your compliance testing results, you may start failing tests that you used to pass with flying colors and you will be required to take corrective action through increased employer contributions or taxable refund distributions to your highly compensated employees. The point here is that from one year to the next, substantive change to your plan, pocket book, or number of participants requires you have your retirement plan "open its mouth" for a checkup and "cleaning". A good plan review will determine whether your retirement plan is still the right fit for your needs.

**Looking at plan investments**

Whether your plan is participant directed or not, you need to look at the investments offered under your plan. If the trustees direct the plan investments, you need an investment policy statement (IPS) to navigate the selection and replacement of plan investments. You also need to heavily rely on the services of a financial advisor since you will make the ultimate selection of plan investments that will determine the plan's rate of return and your liability. For a plan that's participant directed, simply giving your participants a lineup of plan funds isn't enough. In order to get liability protection under ERISA §404(c), you need to give enough information for plan participants to make informed investment decisions. That requires investment education and/or advice to plan participants as well as the development of an IPS to determine plan investment option selections and replacements. A plan review will determine whether you have the right fiduciary process to limit your liability in the selection of plan investments and to determine whether your financial advisor is doing their job or not.

**Cost, cost, cost**

Every time I talk my children to the dentist, I feel like holding on to my wallet for dear life. Again, if you want to pay through the nose for dental care (pediatric dentistry is one big racket), that's your call. As a plan sponsor, you don't have that luxury. Plan sponsors have a duty to only pay reasonable plan expenses based on the services provided. So as a plan sponsor, you need to take a look at the fee disclosures you receive from your plan providers and benchmark them against other providers to determine whether they are reasonable or not. That doesn't mean that you have to select the cheapest providers, it just means that you have to pay reasonable plan expenses based on the services provided. A plan review will let you know whether the fees you pay are reasonable or not.

**Finding a real plan review**

My law firm charges $750 for a Retirement Plan Tune-Up, there are other providers who also provide meaningful plan reviews. Just make sure that whatever review you select, that it's substantive and looks at all aspect of your plan and its administration.

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