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DOL Audits of Health Plans Include ACA Compliance

The Department of Labor (DOL) has broad authority under ERISA to investigate or audit an employee benefit plan's compliance with various federal laws. In connection with an investigation or audit, the DOL generally requires the submission of records or documents related to an employee benefit plan. Typically, an employer first learns that its employee benefit plan has been selected for a DOL audit when it receives a letter from the DOL explaining the audit and requesting certain records or documents.

The DOL is using its investigative authority to enforce compliance with the health care reform law, the Affordable Care Act (ACA). DOL audit letters may request health plan sponsors to provide documents demonstrating compliance with the ACA's mandates. This Legislative Brief summarizes the DOL's audit requests related to ACA compliance and addresses compliance steps for employers.

ACA COMPLIANCE REQUESTS

The DOL's audit requests related to ACA compliance have been divided into three categories:

- (1) Requests for grandfathered plans;
- (2) Requests for non-grandfathered plans; and
- (3) Requests for all health plans.

Grandfathered Plans

A grandfathered plan is a group health plan that existed on March 23, 2010, (the date the ACA was enacted) and has not had certain prohibited changes made to it. If a plan is grandfathered, it is exempt from certain health care reform requirements, such as the requirement to provide preventive health services without cost-sharing. If a plan loses its grandfathered status, it must comply with additional health care reform requirements.

A health plan with grandfathered status must provide a notice to participants every time it distributes materials describing plan benefits, explaining that, as a grandfathered plan, it is not subject to certain ACA requirements.

For health plans that claim grandfathered status under the ACA, the DOL has been requesting:

- Records documenting the terms of the plan on March 23, 2010, and any additional documents to confirm the plan's grandfathered status; and
- The participant notice of grandfathered status included in materials that describe the benefits provided under the plan.

Non-grandfathered Plans

Plans that do not have grandfathered status must comply with additional ACA mandates, such as implementing an improved internal appeals process, meeting minimum requirements for external reviews and covering preventive health services without cost-sharing. In addition to other patient protections, non-grandfathered plans that cover emergency services may not impose preauthorization requirements or increased cost-sharing on emergency services.

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For non-grandfathered health plans, DOL audit letters have been requesting:

- Documents related to preventive health services for each plan year beginning on or after Sept. 23, 2010;
- The plan's internal claims and appeals procedures;
- Contracts or agreements with independent review organizations (IROs) or third-party administrators (TPAs) providing external review;
- Notices regarding adverse benefit determinations and final external review determination notices; and
- The choice of provider notice informing participants of the right to designate any participating primary care provider, physician specializing in pediatrics in the case of a child, or health care professional specializing in obstetrics or gynecology in the case of women.

All Plans

Some of the ACA's mandates apply to all health plans, regardless of whether they have grandfathered status. For example, all plans must provide dependent coverage up to age 26 and must comply with ACA's restrictions on rescissions of coverage and lifetime and annual limits on essential health benefits.

The DOL has been requesting the following information from both grandfathered and non-grandfathered health plans:

- A sample notice describing enrollment opportunities for children up to age 26 for plans with dependent coverage;
- A list of participants who have had their coverage rescinded and the reasons for the rescissions;
- Documents related to any lifetime limit that has been imposed under the plan since Sept. 23, 2010; and
- Documents related to any annual limit that has been imposed under the plan since Sept. 23, 2010.

Expanded Requests Likely

As more ACA reforms take effect, the DOL will likely expand its audit requests. For example, the DOL will likely request documents that show a health plan's compliance with the ACA reforms that became effective for plan years beginning on or after Jan. 1, 2014, such as:

- The prohibition on pre-existing condition exclusions for all enrollees;
- The requirement for grandfathered plans to make coverage available to adult children up to age 26 regardless of whether they are eligible for other employer-sponsored group health coverage;
- The prohibition on excessive waiting periods; and
- Required coverage for clinical trial participants.

COMPLIANCE STEPS

Employers that receive DOL audit letters may be surprised and overwhelmed by the number of documents requested by the DOL auditor. Typically, the audit letter will request that the documents be provided by a specific date. Although employers generally have no way of knowing whether they will be selected for a DOL audit, it is important for employers to retain documents that will help them respond to a DOL audit request in the event this occurs. Inadequate responses to the DOL could trigger additional document requests, interviews, on-site visits and even DOL enforcement actions.

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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In light of these risks, employers should be prepared to demonstrate their compliance with ACA by producing documents. Employers should, at a minimum, maintain and be able to produce:

- Records of the steps they have taken to comply with ACA's requirements, including plan participation information and communications with participants;
- Plan amendments or procedures that were adopted to comply with ACA, as well as contracts or agreements with service providers, such as IROs and TPAs; and
- Notices that were provided under ACA, such as the notice of grandfathered status and notice of enrollment for children up to age 26.

Also, if a plan's ACA compliance documents are maintained by a service provider, the employer should make sure the service provider is retaining the necessary documents and will be able to produce them upon request.

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