DOL to Employers: The F Word Matters in Healthcare

Recent lawsuits and the rising number of Americans covered by self-funded healthcare plans brings renewed focus to employers' fiduciary responsibility as plan sponsors.

As the ever-evolving Employee Retirement Income Security Act (ERISA) reached its 50th anniversary in 2024, employers need better ways to monitor healthcare claims spending to ensure they are acting in their members' best interest.

ERISA requires employers to carefully manage healthcare dollars not simply as a budget line, but as a fiduciary responsibility. This has long been the case regarding employees' 401(k) plans and now the focus is shifting toward employee benefits.

The U.S. Department of Labor (DOL) Employee Benefits Security Administration oversees employee welfare benefits plans and has been stepping up governance of this oversight. ERISA holds employers accountable for healthcare plan spending because employees contribute to plan costs. Therefore, employers must manage their spending of these dollars with the care, skill and diligence of a prudent person.[1] ERISA guidelines for prudent oversight of health plans are relatively vague but not new to employers who have managed retirement plans under this 1974 law for decades, according to Rory Akers, JD, Vice President, Senior ERISA Attorney for Lockton and former DOL Senior Investigator for the Employee Benefits Security Administration.

One looming issue Akers sees is the benchmark limitation for healthcare costs and spending. "It's not for the Department of Labor to say this (healthcare claim) is too expensive," she said. Compliance with ERISA means employers should examine healthcare costs and claims data regularly in order to ensure money is not wasted. This expectation of ongoing monitoring of member healthcare claims does not mean employers need to be perfect in reviewing costs or medical necessity, Akers explained, but rather provide reasonable oversight to review claims costs as it would for any other budgetary cost.

"I say that all the time is because if you have plan sponsors thinking the expectation is perfection at all costs, nobody is going to sponsor benefit plans. That's too high of a bar," she said. "That's why I think ERISA was thoughtful in its use of the word, 'prudence' and not perfection."

Employers with self-funded healthcare plans typically contract with healthcare insurance carriers and third-party administrators (TPAs) to process and pay claims. This structure is a key component in enabling employers to sponsor plans. However, operating a self-funded plan with a TPA does not mean employers are not responsible for how claims are paid; nor does the plan sponsor necessarily transfer fiduciary responsibility to these third parties. Plan sponsors must show they are actively monitoring spending and ensuring claims are paid with effective administration, especially if they are faced with complaints or even lawsuits.

"One of the key things I speak with our clients about right now is you've got to show your work, show the steps you have taken to review the plan operations and ensure third parties are acting appropriately and in accordance with the terms of the plan," Akers said, referring to the employer's process of overseeing healthcare plan spending.

Some employers are forming fiduciary committees to make certain this responsibility is met. In doing so, employers can show prudence in plan spending and decrease the risk of a fiduciary breach even if dollars are inappropriately spent or wasted. Employers who can show sound, logical processes and claims monitoring are better able to meet the bar of prudent oversight. That is why Akers endorses establishing fiduciary committees as one way to build up fiduciary oversight and proactively manage spending rather than having to defend the mismanagement of claims in court.

"It's not going to be long before everybody turns their eyes to the health and welfare side of ERISA to see what's going on … and employers must be prepared," she said, adding that fiduciary committees should include corporate board members, human resource leaders and chief financial officers, all of whom have a role to play in how self-funded plans spend dollars. They will then need to put processes in place to continually monitor the payment of healthcare claims to reduce excessive spending and waste.

It's not going to be long before everybody turns their eyes to the health and welfare side of ERISA to see what's going on … and employers must be prepared."

-Rory Akers, JD

Further, implementing an independent claims monitoring solution (i.e. not financially tied to the claims administrator's adjudicating claims, which can cause conflicts of interest) demonstrates an employer's commitment to ensuring plan dollars are spent appropriately, and has the added benefit of saving money for the plan that can be redirected toward productive uses.

As the DOL increases governance of plan administration by implementing transparency rules, restricting surprise billing and increasing regulations while it ramps up enforcement, employers are understanding the greater need for oversight. Recent lawsuits are also seeking to hold plan sponsors accountable. A new case filed against Wells Fargo claiming, "breaches of fiduciary duties and engaging in prohibited transactions" with regards to "mismanagement of prescription-drug benefits"[2] is the latest suit to address the issue of fiduciary responsibility under ERISA.

Other cases have arisen to question hidden fees and COBRA inadequacies. "All of these have a fiduciary tie," Akers said. "I would argue the Department of Labor has been amping up focus on ERISA with regard to healthcare plan spending over the last decade."

So as ERISA celebrates its 50th anniversary, self-funded employers must ask themselves, "What checks and balances do we have in place?" If none exists, then there is work to be done to ensure self-funded healthcare plans are spending dollars appropriately.

SOURCES:
1. "Understanding Your Fiduciary Responsibilities Under a Group Health Plan," U.S. Department of Labor, September 2015.
2. Sergio Navarro, Theresa Gamage, Dayle Bulla, and Jane Kinsella, et. all vs. Wells Fargo & Company, Civil Action No. 24-cv-3043