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Fiduciary Compliance and Best Practices for Welfare and Retirement

Program Overview

- ❖ ACA – it still exists
- ❖ Gender Identity, Pregnancy Termination Discrimination
- ❖ Health and Welfare Plan Nondiscrimination Testing
- ❖ Reference Based Pricing
- ❖ DOL audits of health plans
- ❖ Mental Health Parity Update
- ❖ Best Practices for Welfare and Retirement
 - What Plan Sponsors should know about engaging fiduciary services
 - Rebates
 - Percent of Savings
 - Pharmacy

ACA – It's Still Here

Well, parts of it...

- Employer Reporting
- PCORI Fee
- Summary of Benefits Coverage
- Individual Mandate
- Employer Mandate

Gender Identity, Pregnancy Termination Discrimination

HHS is reconsidering the status of the Obama-era regulation that prohibits certain health programs from discriminating based on gender identity and pregnancy discrimination.

Health and Welfare Plan Nondiscrimination Testing

Did you know that there is nondiscrimination testing for:

- Cafeteria plans
- Flexible Spending Accounts - dependent care and medical
- Self-funded health plans

Mental Health Parity and Addiction Equity Act of 2008

Updates from the DOL, IRS and HHS:

- Non-quantitative treatment limits
- Treatment for eating disorders is a mental health benefit
- Autism coverage lawsuits

Reference Based Pricing

- What is it?
- Will it work for you?
- What are the risks?

DOL Audits of Health Plans?

The DOL has recently started auditing health plans with more frequency. Audit issues include:

- Fiduciary compliance
- Grandfather status
- Other ACA compliance issues

Fiduciary Basics

Generally four ways to be a fiduciary:

- Named in plan document
- Authority to manage/dispose of plan assets & plan investments
- Discretion over plan administration
- Investment advice for a fee

Other Fiduciary Provisions

Section 405 – co-fiduciary liability

Sections 406 & 408 – prohibited transactions and exemptions

Best Practice for Welfare and Retirement

Two categories of fiduciary services available to plan sponsor from welfare plan service providers:

“3(16)” person or entity that accepts responsibility as plan administrator

“3(21)” person or entity who, based solely on their actions, is a fiduciary with respect to the plan

Best Practices (Continued)

Most plan sponsors are not experts in management and investment of retirement plan assets.

Delegating responsibilities to someone who is knowledgeable in these areas can be very helpful to plan sponsor.

Any delegation of fiduciary duties should be expressed in a written document – provides clarification and clarifies what fiduciary duties remain with the plan sponsor and/or any employee benefit committee established by the plan sponsor.

Best Practices (Continued)

Plan sponsor has a duty to monitor the service provider to ensure it is complying with the terms of its contract, and that it is acting in the best interests of the plan and its participants.

Plan sponsor may only pay reasonable compensation to a service provider. There is nothing in ERISA that requires a plan sponsor to choose the lowest cost service provider.

Identify and understand who are the fiduciaries of your plan, what services are provided by each fiduciary and the compensation paid to each fiduciary.