Baker Insurance Agency LLC

COMPLIANCE SERVICES PORTFOLIO

ARE YOU COMPLIANT WITH ALL FEDERAL BENEFITS LAWS, RULES AND REGULATIONS?

- There are countless rules and regulations governing employee benefit plans, many of which are complex. Our resources will help you meet your compliance obligations and keep you up to date on laws and regulations that affect your employee benefits program.

DO YOU HAVE ACCESS TO CONSTANTLY UPDATED COMPLIANCE BULLETINS AND GUIDES?

- Our easy-to-read articles will help you find answers to your common COBRA, FMLA, health care reform, HIPAA, Medicare Part D and Section 125 questions.

DO YOU WANT TO KNOW ABOUT BENEFIT CHANGES AT A GLANCE?

- Our monthly and quarterly newsletters provide concise, attorney-reviewed summaries of benefits rule changes to keep you up to date with the latest regulations.

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Sample Documents

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COMPLIANCE BULLETIN

DOL Continues Vigorous Enforcement of Mental Health Parity Law

The Employee Benefits Security Administration (EBSA) released its annual enforcement report on the Mental Health Parity and Addiction Equity Act (MHPAEA). EBSA is an agency within the U.S. Department of Labor (DOL). According to EBSA, vigorous enforcement of MHPAEA is one of its **top enforcement priorities**.

MHPAEA is a federal law that prevents group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than medical and surgical benefits.

Since October 2010, EBSA has conducted approximately 2,000 investigations in which MHPAEA compliance was reviewed, and cited approximately 345 violations that involve MH/SUD benefits. These MHPAEA violations included impermissible annual and lifetime dollar limits, improper financial requirements, treatment limitations such as higher copayments or lower visit limits than for medical/surgical services, and impermissible nonquantitative treatment limitations (NQTLs), including overly restrictive fail-first policies, prior authorization requirements and written treatment plan requirements.

Generally, if violations are found by an EBSA investigator, the health plan must remove any noncompliant plan provisions and pay any improperly denied benefits.

Action Steps

Employers should work with their issuers and benefits administrators to confirm that their health plan's coverage of MH/SUD benefits complies with MHPAEA, including any NQTLs.

Active Enforcement

- EBSA conducts MHPAEA compliance reviews in all its investigations where MHPAEA applies.
- When EBSA identifies MHPAEA violations, it asks the plan to make necessary changes to any noncompliant plan provision and to pay any improperly denied benefit claims.
- EBSA may also require the plan or service provider to provide notice to potentially affected participants and beneficiaries.

Parity Requirements

MHPAEA requires parity between a plan's MH/SUD benefits and medical and surgical benefits with respect to:

- Financial requirements (for example, copayments)
- Treatment limitations (for example, visit limits)
- NQTLs (for example, prior

Mental Health Parity

MHPAEA is a federal law that generally prevents group health plans and health insurance issuers that provide MH/SUD benefits from imposing less favorable limitations on those benefits than on medical and surgical coverage. MHPAEA's parity requirements generally apply to group health plans and health insurance issuers that provide coverage for MH/SUD benefits in addition to medical and surgical benefits.

Applicable Health Plans

MHPAEA generally applies to plans sponsored by employers with **more than 50 employees**, including self-insured plans and fully insured arrangements. MHPAEA does not require large group health plans and their health insurance issuers to cover MH/SUD benefits. MHPAEA's requirements apply only to large group health plans and their health insurance issuers that choose to include MH/SUD benefits in their benefits packages. However, other state and federal laws may require a plan to provide these benefits.

The Affordable Care Act (ACA) requires some plans to cover MH/SUD services as an essential health benefit. Specifically, non-grandfathered health plans in the individual and small group markets are required to provide essential health benefits (which include MH/SUD services), as well as comply with the federal parity law requirements.

Nonfederal governmental plans that are self-funded may elect to opt out of MHPAEA's parity requirements. In order to opt out, the plan must file an election with the Centers for Medicare and Medicaid Services (CMS) prior to the beginning of each plan year and must notify the plan participants of its choice to opt out.

Parity Requirements

MHPAEA contains the following parity requirements:

- ☐ The **financial requirements** (such as deductibles, copayments, coinsurance and out-of-pocket limits) applicable to MH/SUD benefits cannot be more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits.
- ☐ **Treatment limitations** (such as frequency of treatment, number of visits, days of coverage or other similar limits on the scope or duration of coverage) must also comply with the MHPAEA's parity requirements.

In addition, MHPAEA imposes parity requirements on the **nonquantitative treatment limitations (NQTLs)** that plans may place on MH/SUD benefits. NQTLs include, for example, medical management standards, formulary designs for prescription drugs, plan methods for determining usual, customary and reasonable charges, exclusions based on a failure to complete a course of treatment and restrictions based on facility type or provider specialty.

Available Resources

The Departments' final FAQs and warning signs of problematic NQTLs highlight aspects of plan design that should be carefully reviewed for MHPAEA compliance. The self-compliance tool includes a questionnaire that employers can complete to help determine whether their group health plan complies with MHPAEA.

COMPLIANCE OVERVIEW

2022 Open Enrollment Checklist

To prepare for open enrollment, group health plan sponsors should be aware of the legal changes affecting the design and administration of their plans for plan years beginning on or after Jan. 1, 2022. Employers should review their plan documents to confirm that they include these required changes.

In addition, any changes to a health plan's benefits for the 2022 plan year should be communicated to plan participants through an updated summary plan description (SPD) or a summary of material modifications (SMM).

Health plan sponsors should also confirm that their open enrollment materials contain certain required participant notices, when applicable—for example, the summary of benefits and coverage (SBC). Some participant notices must also be provided annually or upon initial enrollment. To minimize costs and streamline administration, employers should consider including these notices in their open enrollment materials.

LINKS AND RESOURCES

- Revenue Procedure 2021-25, which includes the inflation-adjusted limits for HSAs and HDHPs for 2022.
- Model notices for group health plans, including the Women's Health and Cancer Rights Act (WHCRA) Notice.
- Model COBRA notices for group health plans.

Plan Design Issues

- Confirm that your plan's out-of-pocket maximum complies with the ACA's limits for 2022.
- For HDHPs, confirm that the plan's deductible and out-of-pocket maximum comply with the 2022 limits.
- Communicate any plan design changes to employees as part of the open enrollment process.

Notices to Include

- Annual CHIP notice
- Medicare Part D creditable coverage notice
- Notice of grandfathered status (if applicable)
- Annual notice regarding coverage requirements for mastectomy-related benefits (WHCRA notice)

PLAN DESIGN CHANGES

ACA Affordability Standard

Under the Affordable Care Act's (ACA) employer shared responsibility rules, applicable large employers (ALEs) are required to offer affordable, minimum value health coverage to their full-time employees (and dependent children) or risk paying a penalty. The employer shared responsibility requirements are also known as the "employer mandate" or "pay or play" rules.

Under the ACA, an ALE's health coverage is considered affordable if the employee's required contribution to the plan does not exceed 9.5% of the employee's household income for the taxable year (as adjusted each year). The adjusted percentage is 9.83% for 2021.

For plan years that begin on or after Jan. 1, 2022, the affordability percentage has not yet been released.

- Watch for IRS guidance on the affordability percentage for 2022 plan years.
- Once the affordability percentage is released, if you are an ALE, confirm that at least one of the health plans offered to full-time employees (and their dependent children) satisfies the ACA's affordability standard.

Out-of-Pocket Maximum

Non-grandfathered health plans are subject to limits on cost sharing for essential health benefits (EHB). The annual limit on total enrollee cost sharing for EHB for plan years beginning on or after Jan. 1, 2022, is **$8,700** for self-only coverage and **$17,400** for family coverage.

- Review your plan's out-of-pocket maximum to ensure that it complies with the ACA's limits for the 2022 plan year ($8,700 for self-only coverage and $17,400 for family coverage).
- If you have a high deductible health plan (HDHP) compatible with a health savings account (HSA), keep in mind that your plan's out-of-pocket maximum must be lower than the ACA's limit. For 2022 plan years, the out-of-pocket maximum limit for HDHPs is $7,050 for self-only coverage and $14,100 for family coverage.
- If your plan uses multiple service providers to administer benefits, confirm that the plan coordinates all claims for EHB across the plan's service providers or divides the out-of-pocket maximum across the categories of benefits, with a combined limit that does not exceed the maximum for 2022.

Preventive Care Benefits

The ACA requires non-grandfathered health plans to cover certain preventive health services without imposing cost-sharing requirements (that is, deductibles, copayments or coinsurance) for the services. Health plans are required to adjust their first-dollar coverage of preventive care services based on the latest preventive care recommendations. If you have a non-grandfathered plan, you should confirm that your plan covers the latest recommended preventive care services without imposing any cost sharing.

More information on the recommended preventive care services is available through the U.S. Preventive Services Task Force and www.HealthCare.gov.

Provided by Baker Insurance Agency LLC

ERISA Compliance FAQs: Enforcement

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for employee benefit plans maintained by private-sector employers. ERISA includes requirements for both retirement plans (for example, 401(k) plans) and welfare benefit plans (for example, group health plans). ERISA has been amended many times over the years, expanding the protections available to welfare benefit plan participants and beneficiaries.

The Department of Labor (DOL), through its Employee Benefits Security Administration (EBSA), enforces most of ERISA's provisions. Violating ERISA can have serious and costly consequences for employers that sponsor welfare benefit plans, either through DOL enforcement actions and penalty assessments or through participant lawsuits.

This Compliance Overview includes a set of frequently asked questions (FAQs) to help employers understand how ERISA's requirements for welfare benefit plans are enforced.

LINKS AND RESOURCES

Department of Labor resources:

- Web page on ERISA Enforcement
- 2016 fiscal year audit summary
- Voluntary Fiduciary Correction Program
- Delinquent Filer Voluntary Compliance Program

HIGHLIGHTS

HEALTH PLAN INVESTIGATIONS

- The DOL audits employee benefit plans for compliance with ERISA, the Affordable Care Act (ACA) and other federal laws.
- Participants may also sue their welfare benefit plans for violations.
- Noncompliance may result in civil penalties or criminal charges.

COMMON VIOLATIONS

- Failures to file complete/correct Form 5500
- Failures to respond to participant requests for information
- Breaches of fiduciary duties

HOW DOES THE DOL ENFORCE ERISA?

The DOL has broad authority to **investigate or audit** an employee benefit plan's compliance with ERISA. The DOL's EBSA division handles audits of employee benefit plans. To perform these audits, EBSA employs over 400 investigators working out of field offices, many of whom are lawyers or CPAs or who have advanced degrees in business or finance.

DOL audits often focus on violations of ERISA's fiduciary obligations and reporting and disclosure requirements. The DOL may also investigate whether an employee benefit plan complies with ERISA's protections for plan participants. The DOL also uses its investigative authority to enforce compliance with the Affordable Care Act (ACA).

Traditionally, DOL audits of employee benefit plans have focused primarily on retirement plans, such as 401(k) plans. However, now that the DOL is enforcing compliance with the ACA, health plan audits are on the rise.

Enforcement Statistics:

During the 2016 fiscal year, EBSA closed 2,002 civil investigations. Of these, 67.7 percent resulted in monetary results for employee benefit plans or other corrective action.

In addition, EBSA filed 62 civil lawsuits and closed 333 criminal investigations. EBSA's criminal investigations led to the indictment of 96 individuals—including plan officials, corporate officers and service providers—for offenses related to employee benefit plans.

WHAT ARE THE POSSIBLE CONSEQUENCES OF A DOL INVESTIGATION?

Being selected for a DOL audit can have serious consequences for an employer. According to a DOL audit report for the 2016 fiscal year, approximately 3 out of 5 investigations resulted in penalties or required other corrective action, such as paying amounts to restore losses, disgorging profits and ensuring claims were properly processed and paid. In addition, a DOL audit may negatively affect an employer's normal business operations because the audit process can be both stressful and time-consuming.

The DOL has the authority to assess civil penalties for many different types of ERISA violations. Common penalty assessments involve the following:

Form 5500 violations (for example, not filing a Form 5500 when required or filing an incomplete Form 5500)	The DOL has the authority under ERISA to assess penalties of up to **$1,100 per day** for each day an administrator fails or refuses to file a complete Form 5500. This maximum penalty amount increases to **$2,097 per day** for violations that occurred after Nov. 2, 2015. The penalties may be waived if the noncompliance was due to reasonable cause.
Failing to respond to participants' requests for plan information	If a plan administrator fails to respond to a participant's request for plan documents (for example, the latest summary plan description) within 30 days, the plan administrator may be charged up to **$110 per day** from the date of the failure or refusal to provide the information.

Courtesy of Baker Insurance Agency LLC

Q **What notices must employers provide to employees regarding the FMLA?**

A Employers must provide employees with the following notices regarding the FMLA:

- General Notice
- Eligibility Notice
- Rights and Responsibilities Notice
- Designation Notice

Each notice is explained briefly in the following paragraphs.

General Notice

Employers covered by the FMLA must prominently post a general FMLA notice where it can be readily seen by employees and applicants. The general notice explains an employee's rights and responsibilities under the FMLA. The Department of Labor (DOL) provides a model general notice for employers to use.

Covered employers must post this general notice even if no employees are eligible for FMLA leave. Covered employers that have eligible employees must also provide this notice to each employee by including it in any written guidance given to employees or by distributing a copy to each new employee upon hire.

Eligibility Notice

When an employee requests FMLA leave, or when the employer learns that an employee's leave may be for an FMLA-qualifyied reason, the employer must notify the employee of his or her eligibility to take FMLA leave within **five business days**, absent extenuating circumstances. The DOL provides a sample eligibility notice for employers to use.

Rights and Responsibilities Notice

Each time the eligibility notice is provided, the employer must also provide a written notice detailing the employee's specific expectations and and explaining any consequences of failing to meet these obligations. The DOL provides a sample rights and responsibilities notice for employers to use. This notice is often combined with the eligibility notice.

If the information provided by the rights and responsibilities notice changes, the employer must notify the employee of the change.

DOL AUDIT GUIDE:
Employee Benefit Plans

Presented by **Baker Insurance Agency LLC**

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This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. This guide may not address all compliance issues with federal, state and local laws or identify all possible requests that may be made in connection with an audit. Compliance with all applicable legal requirements is the responsibility of the health plan sponsor. Using the materials in this guide does not guarantee that a plan sponsor will be able to avoid an audit or is in compliance with all applicable requirements. Use this guide as reference, but contact legal counsel to discuss compliance requirements.

INTRODUCTION

The Department of Labor (DOL) has broad authority to investigate or audit an employee benefit plan's compliance with the Employee Retirement Income Security Act (ERISA). Audits are performed by the DOL's Employee Benefits Security Administration (EBSA). To perform these audits, EBSA employs over 400 investigators working out of field offices, many of whom are lawyers or CPAs or have advanced degrees in business and finance.

DOL audits often focus on violations of ERISA's fiduciary obligations and reporting and disclosure requirements. The DOL may also investigate whether an employee benefit plan complies with ERISA's protections for plan participants, such as the special enrollment rules or mental health parity requirements. The DOL also uses its investigative authority to enforce compliance with the health care reform law, or the Affordable Care Act (ACA).

Traditionally, DOL audits of employee benefit plans have focused primarily on retirement plans, such as 401(k) plans. However, now that the DOL is enforcing compliance with the ACA, health plan audits are on the rise.

Being selected for a DOL audit can have **serious consequences** for an employer. According to a DOL audit report for the 2016 fiscal year, almost 7 out of every 10 investigations resulted in penalties or required other corrective action, such as paying amounts to restore losses, disgorging profits and ensuring claims were properly processed and paid. In addition, a DOL audit may negatively affect an employer's normal business operations because the audit process can be both stressful and time-consuming. The best time for an employer to analyze whether it is ready for a DOL audit is **before** the DOL comes knocking.

This Guide is your manual for preparing for a DOL audit of your HEALTH PLAN. This Guide is designed to provide you with an overview of why certain health plans are selected for audit and what you can do to prepare for an audit and reduce your risk of being audited. It also describes what is typically required of an employer during a health plan audit. It includes:

- Suggestions on how to prepare for a DOL audit;
- Tips for responding to a DOL audit letter;
- A list of documents that DOL investigators commonly request during an audit; and
- A list of available resources and sample documents to help you prepare for an audit.

if necessary, ask for an extension to the response deadline

- ☐ Make copies of all the requested documents for the DOL and review them for accuracy