


Fisher Phillips

Are You Prepared for a Department of Labor Audit of Your Health and Welfare Benefit Plans?



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AGENDA

- Overview of Department of Labor (“DOL”) Audits
 - What triggers a DOL Audit
 - How to respond if your plan is audited
 - What the DOL reviews in an audit
 - Audit process and potential outcomes
- How to Be Proactive in Preparing for an audit

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WHAT TRIGGERS A PLAN AUDIT?



Why Me?

- Participant complaints
- Form 5500 reviews
- Media reports
- Private litigation
- Referrals from other agencies, advocacy groups or state insurance
- Random

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DOL WELFARE PLAN AUDITS

- Health Benefits Security Project was established in 2012
- Includes broad range of investigative issues such as:
 - Compliance with ERISA (documents/reporting)
 - Unpaid or improperly processed benefit claims
 - Excessive service provider fees
 - Systemic denial of promised benefits
 - Criminal misconduct by plan fiduciaries or medical providers

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DOL WELFARE PLAN AUDITS

- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Mental Health Parity Act (MHPA)
- Newborns' and Mothers' Health Protection Act (Newborn's Act)
- Women's Health and Cancer Rights Act (WHCRA)
- Title I of Genetic Information Nondiscrimination Act (GINA)
- Mental Health Parity and Addiction Equity Act (MHPAEA)
- Children's Health Insurance Program Reauthorization Act (CHIPRA)
- Michelle's Law
- Patient Protection and Affordable Care Act (ACA)

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HOW TO RESPOND TO AUDIT NOTICE



DON'T...

- Ask questions about what prompted the audit
- Volunteer documents or information that is not requested
- Ignore the notice

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Fisher Phillips HOW TO RESPOND TO AUDIT NOTICE




DO...

- Notify your legal counsel
- Contact the auditor immediately and establish a respectful and non-confrontational relationship
- Meet with the appropriate management and staff of the company to familiarize them with the audit process

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Fisher Phillips HOW TO RESPOND TO AUDIT NOTICE



DO...

- Provide documentation in a timely, complete and organized fashion
- Be comprehensive – explain any missing information or documentation
- Identify any known compliance problems in advance
- Determine whether violations can be corrected before issuance of a Voluntary Compliance Notice Letter to avoid the 20% statutory penalty

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How does it work?

- Step 1: DOL audit letter arrives in the mail with initial document requests (*you may request additional time*)
- Step 2: Submission of relevant documents (*coordinate with TPA/broker*)
- Step 3: Onsite review/audit (*control your space or neutral location*)
- Step 4: Onsite interviews with fiduciaries and other persons with plan decision-making authorities (*control access*)
- Step 5: EBSA identification of violations, or a closing letter if no violations are found.
- Step 6: Voluntary Compliance Letter
- Step 7: Correction Period
- Step 8: Closing letter

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Fisher Phillips ERISA DOCUMENT REQUEST INCLUDES ...

- Plan documents, Insurance policies and Riders
- Service provider agreements
- Summary Plan Descriptions ("SPDs"), Benefit Booklets, and/or Wrap Document including any amendments and/or riders showing changes in Plan benefits and entitlement to benefits for plan years beginning on or after March 23, 2010
- Signed copies of all Forms 5500 for the last 2-3 years including Schedules, auditors' reports, and any other data to support Form 5500 entries
- Plan financial statements, cancelled checks, payroll records
- Trustee/corporate minutes
- Summary annual reports ("SARs")

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Fisher Phillips ERISA DOCUMENT REQUEST INCLUDES....

- If self-funded, all contracts for claims processing, administrative services and reinsurance, actuarial analysis showing feasibility of self-funding by employer
- Copies of all required notices, including lists and logs of issued notices and a description of procedures for distribution
- Participant records, provider agreements, and fiduciary bonds
- Employee handbooks discussing employee benefits
- New hire and open enrollment documentation including a Sample blank enrollment form given to participants and/or beneficiaries to complete for coverage
- Names, home address, phone numbers, email addresses and Social Security Numbers of all Plan Trustees, Plan Administrators and named fiduciaries

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Fisher Phillips HIPAA DOCUMENT REQUEST....

- Under HIPAA (Portability – not Privacy and Security)
 - Copy of the Plan's rules for eligibility to enroll under the terms of the Plan (including eligibility)
 - Copy of the special enrollment rights notice(s) provided to employees, including any lists or logs an administrator may keep of issued notices
 - If the Plan is in a state with a CHIP or Medicaid program that provided for premium assistance for group health plan coverage, a copy of the Employer CHIP Notice provided to employees
 - Material describing any wellness programs or disease management programs offered by the plan, including rewards based on a health factor and Notice of "reasonable alternative standards" (*GINA compliance evaluated in wellness also*)

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HIPAA DOCUMENT REQUEST...

- Under HIPAA Portability
 - Copy of the Plan's rules for eligibility to enroll under the terms of the Plan (including eligibility)
 - Copy of the special enrollment rights notice(s) provided to employees, including any lists or logs an administrator may keep of issued notices
 - If the Plan is in a state with a CHIP or Medicaid program that provided for premium assistance for group health plan coverage, a copy of the Employer CHIP Notice provided to employees

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ACA DOCUMENT REQUEST ...

- Under ACA (regardless of whether the plan is claiming grandfather status)
 - A sample written notice describing enrollment opportunities relating to dependent coverage of children to age 26 if the Plan provides dependent coverage
 - List of participants or beneficiaries whose coverage has been rescinded, reason for the rescission, and a copy of the written notice of rescission providing 30-days advance notice of any rescission of coverage
 - Documents showing the limits applicable for each Plan year on or after September 23, 2010 if the Plan imposes a lifetime limit or has imposed a lifetime limit at any point since September 23, 2010
 - Documents showing limits applicable each Plan year on or after September 23, 2010 if the Plan imposes an annual limit or has imposed an annual limit at any point since September 23, 2010.

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ACA DOCUMENT REQUEST

- Under ACA if the Plan is claiming or has claimed grandfathered health plan status within the meaning of Section 1251 of the Affordable Care Act
 - Grandfathered plan notice
 - Records establishing that no changes to plan resulted in loss of grandfathered status such as impermissible increases in premiums or cost sharing, etc.

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Fisher Phillips MHPAEA DOCUMENT REQUEST

- Under MHPAEA, plan sponsors must ensure that any financial or treatment limitations on benefits under a group health plan are not more stringently applied to mental health and substance use disorder benefits than to medical/surgical benefits.

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Fisher Phillips MHPAEA DOCUMENT REQUEST

- Examples of MHPAEA Violations
 - Not offering out-of-network providers or inpatient benefits to treat mental health or substance use disorders
 - Charging higher copays
 - Not using plan-specific data when making compliance projections
 - Imposing broad preauthorization requirements on all mental health and substance use disorder treatments
 - Requiring written treatment plans for mental health services

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Fisher Phillips MHPAEA DOCUMENT REQUEST

- Under MHPAEA
 - Documents relating to any analyses the Plan has done regarding testing the parity of the non-quantitative treatment limitations or the quantitative treatment limitations when compared to the medical/surgical limitations
 - Breakdown of medical surgical claims paid showing the amount of medical surgical claims paid for each co-payment level applicable under the Plan for each plan year that the Plan covers mental health and/or substance abuse

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OTHER DOCUMENT REQUESTS

- Under NMHPA
 - Newborns' Act: lists or logs of distributed notices
 - Plan's rules regarding pre-authorization for a hospital length of stay in connection with childbirth
- Under COBRA
 - Sample notices, all election packages mailed, copies of elections, length of coverage and premium payment records
- Under WHCRA
 - Sample notice and distribution logs

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WHEN THE DOL IS IN THE HOUSE



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ON-SITE AUDIT PROTOCOLS

- Determine who will be interviewed
 - Familiar with plan documents and plan operation
 - Prepared to address compliance issues and/or corrective measures
- Arrange to have legal counsel present
- Designate an appropriate location
 - Provide comfortable, usable workspace
 - Avoid high traffic areas
 - Have all documents produced readily accessible
- Informal interview (not recorded or videotaped)
- DOL will ask series of questions until he has covered his agenda

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POSSIBLE AUDIT OUTCOMES

- No action – Closing Letter
 - No ERISA violations found
 - Violations cited, however, DOL does not deem the case fit for further action
 - Violations cited, however no damages or de minimis damages
 - Violations cited and corrected (following receipt of a Voluntary Compliance Letter)
- Corrective Measures Required
 - Voluntary Compliance Letter issued
 - 10 days to respond
 - Proof of correction must be submitted
 - Can take up to a couple months for processing
- Litigation

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TIPS FOR BEING AUDIT READY



Compliance


Compliance

Compliance

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TIPS FOR BEING “AUDIT READY”



- Identify an individual to coordinate compliance efforts
- **Routinely conduct self-audits and correct failures**
- Retain documentation and procedures that support compliance measures in central location
- Respond to participant questions and requests on a timely basis
- File Form 5500s timely and accurately (key trigger is a retirement plan with over 100 participants and no welfare 5500)
- Distribute required participant notices timely and keep records of distribution


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Fisher Phillips **IMPORTANCE OF SELF-AUDITS** **UBA** *United Benefit Advisors*
Shared Wisdom. Powerful Results.

- Can demonstrate a good faith commitment to compliance if the plan is audited by the DOL
- Conducting self-audits grant employers a readiness to respond to participant information requests
- The goal of most self-audits is to identify and correct any compliance problems in advance
- Many available resources for self-auditing on DOL/EBSA website
 - <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/health-plans>
 - <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/cagappa.pdf>
 - <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/rdguide.pdf>

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Fisher Phillips **Final Questions**



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Fisher Phillips **Thank You** **UBA** *United Benefit Advisors*
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