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ERISA Health Plan Fiduciaries Defeat DOL's Excessive Fee Claims

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In one of the first ERISA cases to address claims against fiduciaries for excessive health plan fees, the court entered judgment in favor of the defendants on all counts. The decision addresses health plan fiduciary standards for reviewing plan fees and expenses.

Article By Megan MardyErin Steele Richard J. PearlMcDermott Will & Emery

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Health Law & Managed Care
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IN DEPTH

As the wave of 401(k) and 403(b) Employee Retirement Income Security Act (ERISA) lawsuits continues, there seems to be little discussion of the fiduciary obligations to monitor health and welfare plan fees and expenses. The recent decision in *Acosta v. Chimes District of Columbia, Inc., et al.*, 2019 WL 931710 (D. Maryland Feb. 26, 2019) is a reminder that health plan fees must be monitored and that a good fiduciary process is always the principal defense to claims of fiduciary imprudence.

Background

Chimes DC is a government contractor that employs disabled workers and provides services to the government. In 2015, the US Department of Labor (DOL) sued Chimes DC, several alleged fiduciaries and third parties, alleging ERISA violations in connection with Chimes DC's health and welfare plan.

Chimes DC retained FCE Benefit Administrators as a third-party administrator (TPA) to handle claims and assist with a stop-loss insurance program. FCE was paid a per-employee-per-month fee, which decreased as the number of participants increased, and a percentage of total plan contributions. FCE also was obligated to return to the plan any rebates, discounts, commissions or fees that FCE received from third parties.

In its 2015 suit, the DOL alleged that the plan's fees and expenses were not properly monitored.

Court Decision

The court's analysis largely tracked the types of analyses seen in 401(k) and 403(b) cases—a focus principally on the fiduciary *process* in place to monitor fees and expenses. Here, the court found that process to be prudent. Because Chimes DC had delegated its fiduciary duties to FCE to administer the plan and to an individual defendant to act as trustee, Chimes DC's obligation was to monitor the others. Relying on a DOL Interpretive Bulletin, the court explained that the duty to monitor requires review at "reasonable intervals" as required to ensure satisfactory performance. The evidence established that the defendants:

- Regularly reviewed the prudence of the selection of FCE as TPA
- Monitored service providers at conferences and periodically spoke with peer organizations to gauge their fees
- Renegotiated fees to the plan's benefit
- Held annual meetings with FCE and the trustee
- Reviewed annual reports
- Required outside auditing of the plan

- Monitored the administrative and claims processes
- Were prudent in relying on advisors and external sources, such as industry materials and informal information, to assess the TPA

The court also rejected the DOL's position that ERISA requires requests for proposals (RFPs) to ensure lowest costs. ERISA does not require fiduciaries to "scour the market" to find the cheapest option for participants and has no requirement that fiduciaries engage in a formal written RFP process.

Key Takeaways

Although Chimes DC's plan had unique considerations because of its government contracts and body of participants, this decision provides a roadmap to navigating fiduciary obligations to health plans. Whether fiduciaries have the principal obligation to assess fees or the obligation to monitor another fiduciary, the obligations are similar to those of defined contribution plan fiduciaries. The defendants' process included regular review of TPA services and fees, reasonable reliance on retained advisors, negotiation of reduced fees and informal collections of information in the marketplace. ERISA litigation over health plan fees likely will increase, and this decision is a reminder that health plan fiduciaries must monitor the plan's fees and service providers.

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