Department of Labor Issues Reminder for Documenting Plan Procedures for Designating Authorized Representatives

Article By
Sharon L. Lippett
Epstein Becker & Green, P.C.
Health Employment And Labor Blog

- Health Law & Managed Care
- Labor & Employment
- All Federal

Wednesday, March 27, 2019

The information letter issued by the Department of Labor (the “DOL”) on February 27, 2019 (the “Information Letter”) provides a reminder to plan sponsors about the importance of disclosing the procedure for appointing authorized representatives in the benefit claim and appeal procedures for employee benefit plans subject to the Employee Retirement Income Security Act of 1976 (“ERISA”), as amended and also about the extent of the authority of the authorized representative. The Information Letter was in response to a query as to whether an entity that acts as a patient advocate and health care recovery expert for plan participants, in connection with initial benefit claims and appeals of adverse determinations (the “Entity”) could act as an authorized representative for claimants pursuant to Section 503 of ERISA.

While the Information Letter does not directly respond to the query from counsel to the Entity, the DOL’s response indicates that the Entity could be an authorized
The DOL states that, although a plan may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant, “the procedure cannot prevent claimants from choosing for themselves who will act as their representative or preclude them from designating an authorized representative for the initial claim, an appeal of an adverse benefit determination, or both.”

The Information Letter further provides that the description of claim and appeal procedures included in a plan document and in the summary plan description for the plan must include any procedures for designating authorized representatives. The Information Letter references the Benefit Claims Procedures Regulation FAQs, (the “FAQs”) which include FAQs on the appointment of authorized representatives. FAQ B-1 provides that, with one exception, an example of a reasonable procedure that a plan may establish to determine an authorized representative is completion of a form by the claimant identifying the authorized representative. The exception is where a claim involves urgent care, in which case a plan must permit a health care professional with knowledge of the claimant’s medical condition to act as the authorized representative if the claimant is not able to act on his or her own behalf.

FAQ B-2 addresses authorized representatives and assignment of benefits, a topic of particular interest to plan sponsors of self-insured group health plans. The FAQ states that an assignment of benefits to a health care provider does not constitute the designation of an authorized representative. The DOL explains that assignments are not a grant of authority to act on behalf of a claimant in pursuing and appealing a benefit determination. The DOL further notes that the validity of a designation of an authorized representative depends on whether the designation has been made in accordance with the procedures, if any, established by the plan.

In FAQ B-3, the DOL clarifies the notifications and disclosures that a plan must provide to an authorized representative. The DOL states that when a claimant clearly designates an authorized representative to act and receive notices on his or her behalf regarding a claim for benefits, the plan should, unless the claimant advises otherwise, direct all information and notifications to which the claimant is otherwise entitled to the authorized representative. Based on this view, the DOL cautions that it is important that both claimants and plans understand the extent to which an authorized representative will be acting on behalf of a claimant.

An information letter issued by the DOL is informational only and is not binding on the DOL with respect to any particular factual situation.

**Takeaways for Plan Sponsors**

Based on the Information Letter, sponsors of employee benefit plans subject to ERISA should review the claim and appeal procedures to confirm that they include the procedure that claimants must follow to designate an authorized representative. If the procedure for designating an authorized representative is not included, the plan sponsor should consider amending the plan to provide a reasonable procedure for claimants to follow if they wish to designate an authorized representative. As an example, the DOL has stated that requiring claimants to complete a form is a reasonable procedure.
Similarly, plan sponsors should review and update, as needed, the claims and appeal procedures in the summary plan descriptions for their ERISA plans and confirm that the authorized representatives are receiving appropriate notices and disclosures, as directed by the claimant. Plan sponsors may also want to verify that the current authorized representatives under their plans have been properly authorized by the claimants.

©2020 Epstein Becker & Green, P.C. All rights reserved.

Source URL: https://www.natlawreview.com/article/department-labor-issues-reminder-documenting-plan-procedures-designating-authorized