

## TPAs, Plan Fiduciaries Should React Proactively to U.S. Department of Labor Settlement

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In light of the recent settlement between the U.S. Department of Labor (DOL) and a health plan third-party administrator (TPA), plan fiduciaries and TPAs should re-examine, or even re-negotiate, portions of their current TPA service agreements to avoid potentially significant legal and financial ramifications.

On July 14, 2017, the U.S. District Court for the Southern District of New York approved a settlement agreement between the DOL and MagnaCare—a health plan TPA based in Long Island, New York. The overarching focus of the DOL's lawsuit was the TPA's lack of transparency in its administrative service agreements. Specifically, the DOL's lawsuit alleged that MagnaCare breached its fiduciary obligations due to the lack of clarity surrounding the "network management fees" contained in its administrative service agreements. While MagnaCare maintains the DOL's charges against it were unfounded, the U.S. District Court for the Southern District of New York has approved the settlement agreement.

Pursuant to the settlement, MagnaCare is required to pay, at minimum, \$16 million dollars— about \$1.5 million to the DOL and at least \$14.5 million to compensate its health plan clients for the alleged improper network management fees. In addition to the significant financial penalty, the settlement also includes a detailed guide for how MagnaCare (and presumably other TPAs) must structure their TPA agreements to ensure their fee structures comply with ERISA's fiduciary requirements moving forward, especially as relates to transparency of fees.<sup>1</sup>

**The settlement's implication for TPAs is clear—a TPA has a fiduciary duty to establish and maintain transparent fee arrangements. If a TPA fails to do so, it exposes itself to significant financial risk.**

**The settlement's impact on health plan fiduciaries is slightly less apparent on its face. Still, the DOL's lawsuit and the subsequent settlement serve as important guidance to health and welfare plan fiduciaries that the DOL is emphasizing the importance of a fiduciary's responsibility to enter into reasonable arrangements and understand the nature of payments received by third-party service providers.**

As a result, plan fiduciaries must be increasingly vigilant about their fiduciary duties, namely: (1) ensuring that they carefully review, analyze, and understand each service agreement prior to execution; (2) closely monitoring the fees that those service providers charge the plan to ensure that they are both reasonable and within the parameters of the service agreement; and (3) ensuring that any prohibited transactions, including any conflicts of interest with the plan and participants, are avoided.

**Accordingly, TPAs and health and welfare plan fiduciaries alike should use this settlement agreement as a tool for negotiating, or re-evaluating, their current and future TPA administrative service agreements.**



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<sup>1</sup>Additionally, the DOL required MagnaCare to rework its claims procedures—specifically those relating to

emergency medical care—to ensure that those procedures comply with ERISA.

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