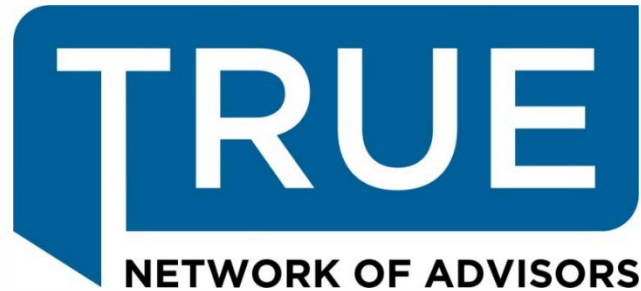


DOL Audit Playbook



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Medicare Part D

- ❖ Each year, employers offering prescription drug coverage through a group health plan must determine whether the coverage is creditable or non-creditable.
- ❖ Medicare Part D Notice Requirements
 - To Medicare-eligible employees:
 - Prior to October 15 (the annual Part D enrollment period);
 - Prior to the effective date of coverage for eligible employees who enroll in prescription drug coverage;
 - Upon any change in the prescription drug coverage that changes the coverage creditability status;
 - Upon termination of the prescription drug coverage; and
 - Upon request by an eligible employee.
 - To CMS:
 - Within 60 days of the start of the plan year;
 - Within 30 days of any change in the plan's creditability status, and
 - Within 30 days after termination of the plan.

Medicare Part D – Changes Effective in 2025

- ❖ **The Inflation Reduction Act of 2022 introduced several changes to Medicare Part D that will become effective on January 1, 2025:**
 - **Reduced Out-Of-Pocket Maximum**
 - **\$8,000 → \$2,000**
 - **Medicare Part D Design Changes**
 - **Elimination of the Coverage Gap (aka “donut hole”) phase**
 - **True Out-of-Pocket Costs (TrOOP)**
 - **For 2025, TrOOP will include payments for previously excluded supplemental benefits provided by Part D sponsors and Employer Group Waiver Plans (EGWPs).**
 - **Determination of Creditable Coverage**
 - **CMS indicated that it will substantially alter or potentially eliminate the simplified method by 2026**

Medicare Part D – Employer Next Steps

❖ Creditability Assessment

- **Special attention should be given to the creditability of HDHP plans*

❖ Notice Distribution

- ***October 15, 2025**

❖ Next year's creditability determinations

- ***Plan sponsors should be prepared for the “Simplified Method” to undergo significant change, if not complete removal, for 2026.**

DOL Jurisdiction and Enforcement

- ❖ **The DOL shares jurisdiction with the IRS over most benefit plans**
- ❖ **Statutory jurisdiction includes ERISA, ACA, COBRA, HIPAA Portability, FLSA**
- ❖ **DOL priorities include:**
 - **Group Health Plans**
 - **Plan Assets**
 - **Plan Administration**
 - **MHPAEA**

Reasons for Initiating Investigations

- ❖ **Participant complaints**
- ❖ **Referrals from other agencies (e.g., IRS, SEC, HHS)**
- ❖ **Enforcement initiatives (National Enforcement Projects)**
- ❖ **Filings:**
 - **Forms 5500**
 - Compensation reported on schedules
 - **Forms M-1**
 - **Tax Filings**

Procedure for DOL Investigation

❖ Initial Letter

- Document Request or Appointment Letter

❖ Document Production and On-Site Interviews

❖ Closing Letter

- No DOL action to be taken
- “Voluntary Compliance” notice
- Litigation letter

❖ Timeline



Audit Best Practices

- ❖ Choose one point person to serve as liaison
- ❖ Inform DOL of your ERISA counsel
- ❖ Prepare personnel for on-site interviews
- ❖ Negotiate scope of document request (e.g., limit to sampling of client documents)
- ❖ Perform legal review of subpoenaed and any other requested materials before delivery to DOL
- ❖ What to do if any discrepancies are uncovered
- ❖ **Best Practice Before: Self-Audit**

ERISA Coverage & Exemptions

❖ **Employee Welfare Benefit Plans**

- **Plan, fund, or program established by Employer providing medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers scholarship funds, or prepaid legal services**

❖ **Exempt: Governmental plans, church plans, Voluntary Plans Safe Harbor**

❖ **Cafeteria plans are a creature of the Internal Revenue Code**

- **Not (automatically) ERISA plans**

Health and Welfare Plans

- ❖ **Group Health Plans** – An employee welfare benefit plan to the extent that the plan *provides medical care* (including items and services paid for as medical care) to employees (including both current and former employees) or their dependents directly or through insurance, reimbursement, or otherwise
- ❖ **Generally includes**
 - **Major Medical**
 - **Vision**
 - **Dental**
 - **Most Wellness Programs**
 - **Employee Assistance Programs**
 - **Telemedicine Programs**

ERISA Group Health Plans

- ❖ **Integration**
- ❖ **“Excepted Benefits”**
 - **e.g., disability plans, on-site medical clinics, stand-alone dental and vision plans, certain limited benefit plans (cancer indemnity)**
- ❖ **Note – still subject to ERISA and most are still subject to HIPAA Privacy and Security requirements**

ERISA Documents

❖ ERISA Plan Documents

- **WHAT** are they?
- **WHERE** are they?
- **New MHPAEA assistance for employees to request documents**
- **Your Playbook**

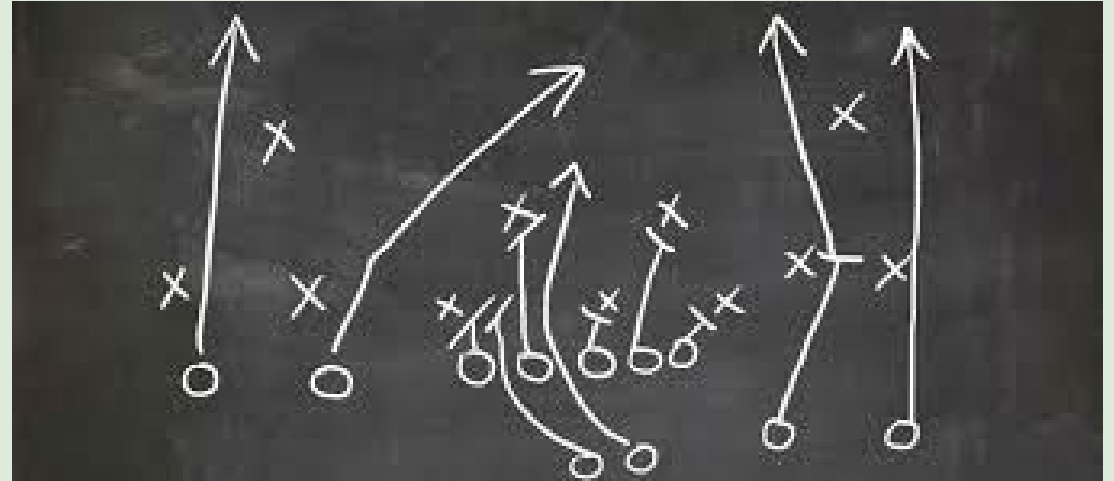
❖ Summary Plan Descriptions

- **Summary of Material Modifications**

❖ Wrap Document?

- **Plan document compliance for “bundled plans”**
- **Filings and plan structure**
- **Integration**

❖ “Plan document” may include all instruments under which the plan is administered



Plan Assets

- ▼ DOL enforcement priority
- ▼ *Ordinary notions of property rights*
- ▼ Participant Contributions
- ▼ MLR Rebates and similar rebates



Plan Assets

▼ Exclusive Benefit Rule

- ▼ Plan assets may only be used for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan

▼ Plan Document provisions

▼ Reasonable Plan Administrative Expenses

- ▼ Settlor vs. Plan expenses

- ▼ Plan Expense Reimbursement Policy

▼ Prohibited Transactions

▼ Fiduciary Decisions

Trust Requirements & Exemptions

▼ Funded vs. Unfunded vs. Fully-Insured

- ▼ General Assets
- ▼ Trusts

▼ DOL Non-enforcement Policy (TR 92-01)

- ▼ Employee contributions made through a cafeteria plan
- ▼ Forwarded directly to carrier within three months (fully-insured)
- ▼ Benefits paid directly from general assets (self-funded)

Fiduciary Roles

- ❖ **ERISA-covered benefit plans are required to have fiduciaries.**
- ❖ **There are various fiduciary roles under ERISA, including:**
 - **Named Fiduciary**
 - **Plan Administrator**
 - **Discretionary Fiduciaries**
 - **Trustees**

Understanding Fiduciary Actions

- ❖ **Fiduciary duties apply to fiduciary actions**
 - **Discretionary decisions that involve an element of choice or judgment are typically fiduciary in nature**
- ❖ **Fiduciary duties do not apply to non-fiduciary actions, which are either:**
 - **Plan sponsor ("settlor") functions.**
 - **Non-discretionary, ministerial functions.**
- ❖ **Best Practice: Assume everything is a fiduciary action**
 - **Proper consideration**
 - **Documentation**

Fiduciary Responsibilities & Duties

- ❖ **Duty to administer the plan in conformity with the plan document(s)**
 - Includes the plan document, trust document, investment policy statements, or other policies
- ❖ **Duty of Loyalty / *Exclusive Benefit Rule***
 - Duty of undivided loyalty to plan participants and beneficiaries
 - Act for the sole purpose of providing benefits to plan participants
 - Only pay reasonable plan expenses
- ❖ **Duty of Prudence**
 - Act with the care, skill, and diligence that a prudent person who is familiar with the matter would use under similar circumstances
- ❖ **Duty to Avoid Prohibited Transactions**
 - Conflicts of Interest, Self-Dealing, Reasonable Fees
 - Plan Administrative Expenses and “in-house” administration

Fiduciary Best Practices

- ❖ **Establish Governance Structure**
 - Identify positions and responsibilities
 - Designate authority
 - Plan committee?
- ❖ **Understand delegation of responsibility under committee charters and plan documents.**
 - Ask: Is this within my responsibility?
 - **Should you ask?** Is this a fiduciary function?
- ❖ **Be willing to dedicate the time and effort required.**
- ❖ **Read meeting materials in advance and prepare questions.**

Fiduciary Best Practices

- ❖ Understand what expenses can be paid from plan assets.
 - Begin with general assumption that paying anyone for plan services is a prohibited transaction.
- ❖ Maintain records of decisions to ensure consistency in applying plan terms to participants and beneficiaries
- ❖ Seek expert assistance when needed
 - **Brokers, Consultants**
 - Attorneys
 - Actuaries
- ❖ Generally understand plan terms and operation, including:
 - Eligibility for participation
 - Vesting, withdrawal, distributions, loans
 - Participant communications and disclosures

Review Plan Documents & Materials

- ❖ **Official Plan Governance Documents:**
 - **Plan Document**
 - **Trust agreement**
 - **Investment Policy Statement**
- ❖ **Other administrative policies (e.g., cybersecurity policy)**
- ❖ **Summary Plan Description (SPD)**
- ❖ **Fiduciary committee by-laws or charters**
- ❖ **Minutes from fiduciary committee meetings**
- ❖ **Forms 5500 Annual Reports**
- ❖ **Service provider agreements**
- ❖ **Employee Handbooks**

New DOL Cybersecurity Guidance

- ▼ **DOL Updates Cybersecurity Guidance for Plan Sponsors, Fiduciaries, Recordkeepers, Plan Participants to Protect Info, Assets**
 - ▼ Jurisdiction?
 - ▼ HIPAA?
 - ▼ Fiduciary Duty
- ▼ **Applies to all Plans (welfare and retirement/pension)**
- ▼ **Will be part of DOL Audits**
- ▼ **Text of EBSA Compliance Assistance Release No. 2024-01: Updated Cybersecurity Guidance for Employee Benefit Plans**
 - ▼ **Tips for Hiring a Service Provider: Helps plan sponsors and fiduciaries prudently select a service provider with strong cybersecurity practices and monitor their activities, as ERISA requires.**
 - ▼ **Cybersecurity Program Best Practices: Assists plan fiduciaries and record-keepers in their responsibilities to manage cybersecurity risks.**
 - ▼ **Online Security Tips: Offers plan participants and beneficiaries who check their retirement accounts or other employee benefit plan information online basic rules to reduce the risk of fraud and loss.**



Mental Health Parity Comparative Analysis

- ▼ Effective February 10, 2021.
- ▼ Applicable to any group health plan that offers mental health or substance use disorder (MH/SUD) benefits.
- ▼ If group health plan imposes non-quantitative treatment limitations (NQTLs) on MH/SUD benefits, the plan must perform and document a comparative analysis of NQTLs on MH/SUD benefits vs. medical/surgical benefits.
- ▼ Analyses must be available to agencies upon request, and agencies must request at least 20 per year.
- ▼ DOL guidance:
 - ▼ FAQs
 - ▼ Self-Compliance Tool
 - ▼ DOL's Webpage on MH/SUD Parity, which includes links to the regulations and additional guidance

Final Rules:

Mental Health Parity and Addiction Equity Act (MHPAEA)

- ▼ Did the rules *really* change anything?
- ▼ In virtually all cases, the DOL has found employers and their plans lacking in compliance with the MHPAEA, particularly with regard to the requirement to conduct comparative analyses of a plan's non-quantitative treatment limitations for mental health and substance use disorder (MH/SUD) benefits.
- ▼ Final regulations require fiduciary *certification* of the CA
 - ▼ Provides for certification through “engaging in a prudent process to select one or more qualified service providers to perform and document a [CA] and have satisfied their duty to monitor those service providers as required under [ERISA].”
 - ▼ It is important to note that the final regulations do not define “qualified service provider.”

