

ERISA Disclosure Requirements for Service Providers Extended to Group Health Plans

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The recently enacted Consolidated Appropriations Act of 2021 (“CAA”) requires new disclosures for brokers and other consultants providing services to certain group health plans. Under the CAA, “covered service providers” must disclose their “direct” and “indirect” compensation above \$1,000 received during the term of the contract or arrangement to a responsible plan fiduciary of a “covered health plan.”

Previously, the [DOL issued regulations](#) pursuant to ERISA Section 408(b)(2) only requiring qualified retirement plans to disclose this information, specifically exempting group health and welfare plans. The CAA amends ERISA Section 408(b)(2) to broaden the definition of “covered plan” to include “covered health plans”, and it requires the disclosure of direct and indirect compensation paid by “covered service providers” to such plans.

A “covered health plan” includes employee benefit welfare plans to the extent the plan provides medical care to employees or their dependents directly or through insurance, reimbursement, or other methods. A “covered health plan” does not include a qualified small employer health reimbursement arrangement.

A “covered service provider” is defined to include entities that provide brokerage or consulting services for which the provider enters into a contract or arrangement with the covered plan and reasonably expects \$1,000 or more in direct or indirect compensation. The brokerage and consulting services include the selection of insurance products, recordkeeping services, medical management vendors, benefits administration (including vision and dental), stop-loss insurance, pharmacy benefit management services, wellness design and management services, transparency tools, group purchasing organization agreements, participation in and services from preferred vendor panels, disease management, compliance services, employee assistance programs, or third party administration services.

“Direct compensation” includes all compensation paid directly from the plan. “Indirect compensation” is defined as compensation from any source other than the covered plan, the plan sponsor, the covered service provider, or an affiliate. It also includes compensation from a subcontractor unless it is received in connection with services performed under a contract or arrangement with a subcontractor.

The new law details specific items that must be disclosed by the service provider to the plan fiduciary, including a description of the services provided and a description of all covered direct and indirect compensation. The disclosure requirements will be effective December 27, 2021.

Group health plans should begin working in coordination with covered service providers to determine whether these new disclosure requirements will apply to them and, if so, what indirect compensation must be disclosed. In preparing to comply with these new disclosure rules, affected parties may seek guidance in the disclosures practices that developed under Section 408(b)(2) in connection with qualified retirement plans.

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