

# Benefits BULLETIN



## For Sponsors of ERISA-Covered Group Health Plans: New Service Provider Disclosure Rules

● October 7, 2021 ●

The Consolidated Appropriations Act of 2021 (CAA), signed into law in December 2020, contains a new disclosure requirement with respect to services provided to ERISA-covered group health plans. Specifically, this disclosure must detail the compensation the service provider receives in connection with the services provided to the plan.

### Why Must this Disclosure be Made?

ERISA generally prohibits transactions between an ERISA plan and a “party-in-interest,” such as service providers to the plan. However, an exception allows such transactions so long as the plan only pays reasonable compensation for necessary services. This new disclosure requirement is intended to provide the plan with information about services and compensation in order for the plan to determine whether that compensation is reasonable.

Where a service provider fails to make the required disclosure, the services will not qualify for the prohibited transaction exception. As a result, the plan fiduciary – the employer-sponsor – may be held liable for penalties.

### Who Must Provide the Disclosure?

Group health plan service providers that reasonably expect to receive \$1,000 or more in direct or indirect compensation for services provided to an ERISA-covered group health plan must provide a disclosure. These services providers include health plan brokers and consultants, recordkeeping services, third-party administrators, pharmacy benefit managers, disease management and wellness vendors, and compliance advisors.

Critically, though, a service provider is obligated to provide a disclosure only where they expect to receive \$1,000 or more in direct or indirect compensation. Direct compensation means compensation that is paid directly from a group health plan with plan assets (in general,

this will only be the case where a plan is self-insured and funded through a trust, from which the payments to service providers are made). Indirect compensation means compensation received from a source other than the group health plan or the plan sponsor.

A disclosure must be made regardless of whether services are provided pursuant to a written service agreement.

## **To Whom Must the Disclosure be Provided?**

The disclosure must be provided to the plan fiduciary. For most plans, the plan fiduciary is the employer-sponsor of the plan.

## **What Information Must be Disclosed?**

While the disclosure must include various pieces of information, most importantly, it must provide the plan fiduciary with a description of all direct and indirect compensation that the service provider reasonably expects to receive in exchange for the services they provide. This requires the service provider to make a good faith estimate of the compensation they expect to receive at the time the disclosure is made.

This compensation may be paid by with plan assets that are held in trust, or from third parties such as insurance carriers in the form of commissions or bonuses, and from third-party administrators or affiliates in the form of referral fees. However, for purposes of this disclosure, compensation will not include any payments that are paid directly to the service provider by the employer-sponsor.

## **When Must the Disclosure be Made?**

This disclosure requirement takes effect December 27, 2021. Disclosures should be provided for all contracts or arrangements that are entered into or renewed with service providers on or after this date, and annually thereafter.

## **Next Steps**

Employer-sponsors of group health plans subject to ERISA will need to identify the various individuals and entities that provide services to their plan. Unless the service provider's payment consists only of direct payments by the employer-sponsor, the service provider should distribute a disclosure statement upon each initial engagement and prior to subsequent renewal periods beginning December 27, 2021. Employer-sponsors may choose to be proactive and request the disclosure statement in advance.