

ERISA OVERVIEW

What is ERISA?

The Employee Retirement Income Security Act (ERISA), a law passed by the U.S. Congress in 1974, sets standards for: administering private employee health benefit plans (“plans”); disclosing financial and other information to plan participants (“enrollees/beneficiaries”), and processing of health claims.¹ ERISA was enacted to protect the interests of enrollees/beneficiaries and their dependents with private employee benefit plans, and establish one Federal comprehensive law, thereby reducing the conflict of the employer meeting multiple states’ laws. Examples of the enrollee/beneficiary interests that ERISA attempts to protect include access to financial and other information regarding the plan, a standard of conduct requirement for plan fiduciaries², and consistency in the administration of plans in multiple states. If you have a patient whose Healthplan is governed by ERISA, there are steps you can take to ensure that benefits are paid appropriately.

What is an ERISA Plan?

Determining whether an enrollee/beneficiary has an ERISA plan can be difficult. This is due in part to the fact that many of the same networks are contracted by ERISA and non-ERISA plans. To determine whether an enrollee/beneficiary is covered by an ERISA plan, determine if the plan is provided by a private employer; if so, the plan is an ERISA plan. ERISA regulations only cover plans provided by private employers; therefore, non-private employer-provided plans are not covered under ERISA regulations.

Non-private plans are provided by:

- Government Agencies
- Medicare
- Medicaid
- Public Schools
- Workers’ Compensation
- Military
- Churches
- Any other plans that are not covered by a private employer.

Recent ERISA change

Certain State Laws may now apply to ERISA Plans. The U.S. Supreme Court ruled in April 2003, in the case of *Kentucky Association of Health Plans, Inc. v. Miller*, 123 S.Ct. 1471 (S Ct., April 2, 2003), deciding that ERISA plans are no longer exempt from certain state insurance laws (in some important areas). Simply stated, ERISA plans that were previously exempt from state law, may no longer be exempt and are subject to applicable insurance laws.

With this ruling, plus other U.S. Supreme Court rulings and several U.S. Courts of Appeals rulings, the legal groundwork has radically changed in the area of preemption³ of state insurance laws that may individually regulate ERISA health care plans. The new test, to determine whether any state insurance law is shielded from ERISA preemption, requires determination as to whether the law regulates insurance (i.e., assumes financial risk for claims payment).

2003 Changes to ERISA Plans

Evaluation of a state law must:

- Show the state law is specifically directed toward these groups engaged in insurance; and
- Substantially affect the financial risk of claims payment between the insurer (i.e., employer) and the enrollee/beneficiary.

Generally, the claim appeal⁴ procedures hold plans to these requirements:

- Include a specific time frame for filing an appeal,
- Spell out the rights of plan participants and responsibilities of the plans, and
- Require the plan to indicate why and on what basis a claim was denied.

Before these 2003 ERISA claim and appeals regulations there was:

- Lack of recourse in filing an appeal.
- Lack of information on whom, in a payer organization, made an adverse benefit or claim review decision.
- No responsibility to determine on what basis or sources the decision was adjudicated.

The new ERISA regulations:

- Allow access to an appeals process in the case of an adverse benefit or claims-payment decision.
- Require the citing of any reasons (e.g., efficacy research studies) used in the claim decision.
- Require the credentials of the decision-maker be provided to the enrollee/beneficiary upon request free of charge.

How do I complete an ERISA appeal?

Review ACA's [Flowchart](#) and [Checklist](#) for filing an ERISA appeal.

ACA Actions on ERISA Regulations:

In regard to the new ERISA court determinations the ACA, in order to support the chiropractic profession and state associations, is developing information on how to deal with these recent rulings, including recommendations on state law evaluation. An ongoing analysis to explore other new laws that may develop following these Court decisions is also underway.

Note these rulings now provide a new opportunity for states to revisit the issue of indirect regulation of ERISA plans - a real opportunity for doctors of chiropractic (DCs) to ensure ERISA plans are administering chiropractic benefits fairly. While the rulings do not mandate chiropractic benefits, it does allow opportunity to explore the extent to which states may indirectly regulate ERISA plans.

Footnotes:

¹ Claim – The proposal provided that a “claim” is any request for a plan benefit or benefits, made by a claimant or by a representative of a claimant, that complies with a plan’s reasonable procedure for making benefit claims.

² Fiduciary – A person, as defined under ERISA, that exercises any discretion or control over management of the plan or the management or disposition of its assets. There may be named fiduciaries of a plan, or third party service providers may be fiduciaries, if they agree to be fiduciaries or if they exercise discretion of control over the management of plan benefits.

³ Preemption – A doctrine of law that allows a federal law to take precedence over, or to displace, a state law.

⁴ Appeal – A payer process in which a provider or an enrollee/beneficiary can request a reconsideration of a payer decision (e.g., claim payment, benefit determination).

ERISA Regulations:

[Amendments to Civil Penalties Under ERISA Section 502\(c\)\(7\) \[Rules and Regulations\] \[08/10/2007\]](#)

[Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries; Civil Penalties and Conforming Technical Changes on Civil Penalties Under ERISA; Final Rules \[01/24/2003\]](#)

[Civil Penalties Under ERISA Section 502\(c\)\(7\) and Conforming Technical Changes on Civil Penalties Under ERISA Sections 502\(c\)\(2\), 502\(c\)\(5\) and 502\(c\)\(6\) \[01/24/2003\]](#)

[Procedures for Administrative Hearings Regarding Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3\(40\)\(A\) of ERISA \[Rules and Regulations\] \[04/09/2003\]](#)

[Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties Under Section 502\(c\)\(5\) of ERISA \[Rules and Regulations\] \[04/09/2003\]](#)

Additional regulations pertaining to ERISA are available from the [Department of Labor](#).