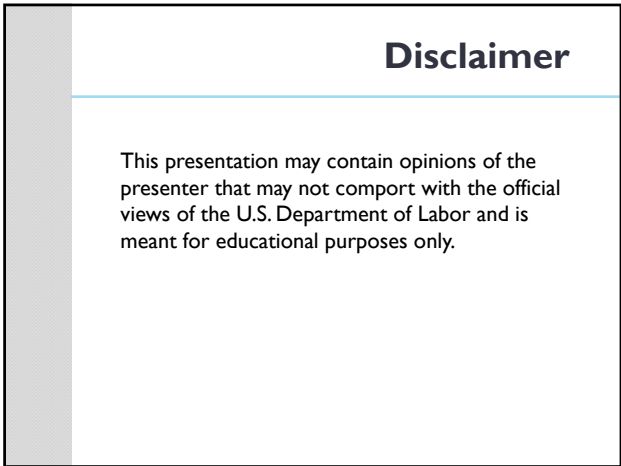
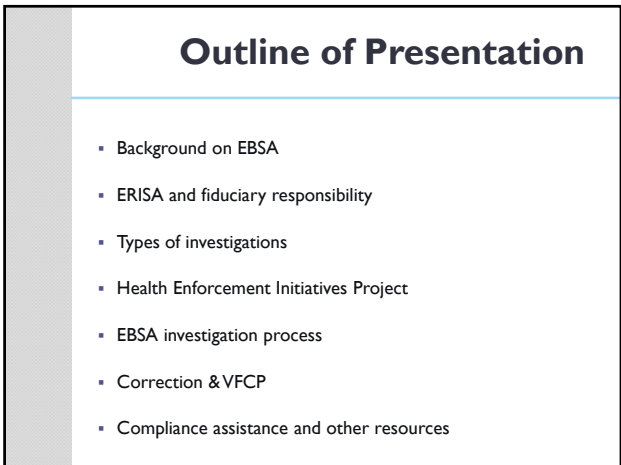




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General Organization
Overview

The Employee Benefits
Security Administration
(EBSA)

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EBSA's Mission Statement

The mission of the Employee Benefits Security Administration is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. We will accomplish this mission by:

- developing effective regulations;
- assisting and educating workers, plan sponsors, fiduciaries and service providers; and
- vigorously enforcing the law.

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ERISA Basics for Group
Health Plans

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Employee Retirement Income Security Act (ERISA)

Applies to employee benefit plans sponsored by private sector employers and/or unions

NOT government plans

NOT church plans

Other exclusions may apply

Generally, ERISA allows the plan sponsor to decide whether to offer a plan and allows flexibility in the plan's benefit design.

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A Few Basic Things a Group Health Plan Must Have:

Governing plan document(s) must comply with ERISA

A Summary Plan Description (SPD) provided to participants and beneficiaries

Named Fiduciary

Reasonable claims & appeals procedure

Fidelity bond (to protect against dishonesty) unless the plan is funded solely by general assets of plan sponsor

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Regulation of Group Health Plans

ERISA Regulation

- Title I of ERISA applies to employee welfare benefit plans
- ERISA Preemption

GROUP HEALTH PLAN

Other Laws Include:

- Americans with Disabilities Act
- Pregnancy Discrimination Act
- Fair Labor Standards Act
- Public Health Service Act
- Internal Revenue Code

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Health Laws Included in ERISA Part 7

- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Newborns' and Mothers' Health Protection Act (Newborns' Act)
- Women's Health and Cancer Rights Act (WHCRA)
- Genetic Information Nondiscrimination Act (GINA)
- Mental Health Parity and Addiction Equity Act (MHPAEA)
- Children's Health Insurance Program Reauthorization Act (CHIPRA)
- Michelle's Law
- Patient Protection and Affordable Care Act (Affordable Care Act)

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Enforcement and Jurisdiction

- Department of Labor • ERISA
- Department of Health and Human Services • Public Health Service Act
- Department of Treasury • Internal Revenue Code
- States • State Insurance Laws
- Participants and Beneficiaries • Private litigation

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Enforcement and Jurisdiction

Department of Labor's Enforcement Role

- DOL is responsible for enforcing the requirements of Title I of ERISA with respect to employment-based group health plans

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Enforcement and Jurisdiction

Role of the States

- States have direct jurisdiction over health insurance issuers that sell products in their state.
- Group health plans frequently purchase health insurance products from licensed health insurance issuers. Generally, these products are reviewed for compliance by the state insurance department; however, not all issuer's products undergo market conduct exams.

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Enforcement and Jurisdiction

Department of Health and Human Service's Role

- Generally, the states enforce state laws that place requirements on issuers. These provisions of these state laws must be at least as protective as ERISA part 7 and the Public Health Service Act (PHSA).
- However, if HHS determines that a state has failed to "substantially enforce" its parallel laws, HHS can directly enforce the PHSA with respect to health issuers in that state.
- HHS may also be invited in by the state to enforce in that state

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Enforcement and Jurisdiction

Department of Treasury's Enforcement Role

- Treasury enforces most of the requirements of the ERISA health laws through parallel Internal Revenue Code provisions.
- Treasury may impose an excise tax on plans or employers that fail to comply with these health laws

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Enforcement and Jurisdiction

Participants and Beneficiaries

- ERISA 502(a) - Participants and beneficiaries also have a private right of action to enforce their rights against plans and issuers

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ERISA Reporting and Disclosure for Group Health Plans

Reporting Requirements

- Certain group health plans must file the Annual Report (Form 5500)
- MEWAs must file the Form M-1.

Disclosure Requirements include:

- Summary Plan Description (SPD)
- Summary of material modifications (SMM)
- Summary of Benefits and Coverage (SBC)
- Adverse Benefit Determinations and other disclosures as required by ERISA 503 claims procedure rules
- Various notices to comply with the health laws of ERISA part 7
- COBRA notices

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A Fiduciary is any person

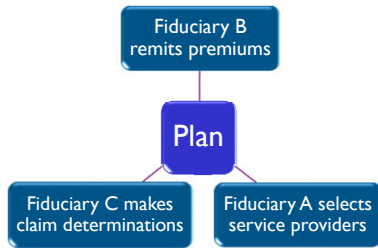
Named as a plan fiduciary in plan documents – or who:

- Exercises discretionary authority or control over plan management - or -
- Exercises authority or control over plan assets - or -
- Provides investment advice for compensation (direct or indirect)

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Plan Fiduciaries

- Plans can have multiple fiduciaries
- Fiduciaries can be named or functional



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A Fiduciary must:

- Act “solely in interest” of participants & beneficiaries
- Discharge duties prudently with care, skill and diligence
- Diversify plan investments
- Follow terms of governing documents (to the extent they are consistent with ERISA)
- Follow governing provisions of ERISA under Part 7.

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A Fiduciary must NOT:

- Act in own self interest
- Act on behalf of a party with adverse interests
- Accept “anything of value” from those doing business w/ the Plan (e.g. kickbacks)

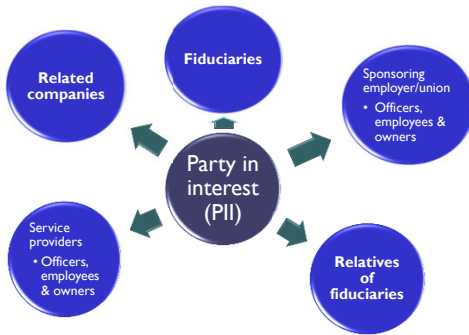
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Fiduciaries must NOT cause the Plan to engage in a prohibited transaction such as:

- Sale or exchange of plan assets with party in interest (PII)
- Extension of loan or credit to PII
- Contract for goods, services or facilities with PII
- Transfer plan assets to a PII for their use or benefit

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Parties in Interest



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Fiduciaries can be held *personally liable* for losses resulting from a fiduciary breach

For example: Fiduciary A can also be held *personally liable* for losses resulting from a breach by Fiduciary B

if A's failure(s) allowed B to breach	if A knowingly participated in or knowingly concealed B's breach	if A knows about B's breach and fails to make reasonable efforts to correct B's breach
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Penalties may be imposed for a breach of fiduciary duty

- ERISA Sec. 502(l) imposes 20% penalty on the amount paid pursuant to a court order or settlement agreement
- IRS can impose excise tax on prohibited transactions
- IRS can impose excise tax under IRC Sec. 4980D for failure to meet certain group health plan requirements
- Numerous other penalties for R&D failures

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Some fiduciary breaches may also constitute criminal violations of ERISA, other federal law, or state law.

Examples include:

- Accepting kickbacks
- Filing fraudulent claims
- Stealing premiums or contributions

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Types of investigations

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Investigations may be civil or criminal in nature and may focus on:

- The Plan
- The Plan Sponsor
- A Service Provider
- An Individual

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Sources for Targeted Investigations

- Participant complaints
- Form 5500/Form M-I Reviews
- Referrals from:
 - Other agencies
 - State insurance departments
 - Advocacy groups
- Media
- Private litigation

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National Health Enforcement Initiatives Project

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Health Enforcement Initiatives

- The national initiatives for health enforcement for FY 2022 remain unchanged from FY 2021, in include MEWA financial solvency/fraud investigations, emergency services, and health service provider self-dealing. MHPAEA enforcement is now a national project and there will be an increased focus on MHPAEA in FY 2022. Enforcement of the group health plan requirements related to COVID-19 and COBRA under FFCRA and the CARES Act, and the American Rescue Plan will also be areas of focus in FY 2022, as will implementation and enforcement of the surprise billing and transparency provisions of the Consolidated Appropriations Act of 2020.
- Includes a broad range of investigative issues such as:
 - Proper plan administration
 - Proper claims payment
 - Service provider fees
 - Compliance with claims procedure rules
 - Compliance with health care laws under Part 7 of ERISA in stated plan terms and operations
 - Insolvency/unpaid claims

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Examples of Group Health Plan Violations

- Failure to provide benefits in accordance with plan terms
- Improper or arbitrary claims adjudication
- Failure to follow the DOL claims procedure rules
- Failure to forward employee premiums to the insurance provider
- Failure to provide mental health benefits in parity with medical/surgical benefits in accordance with mental health parity rules
- Failure to provide required notices

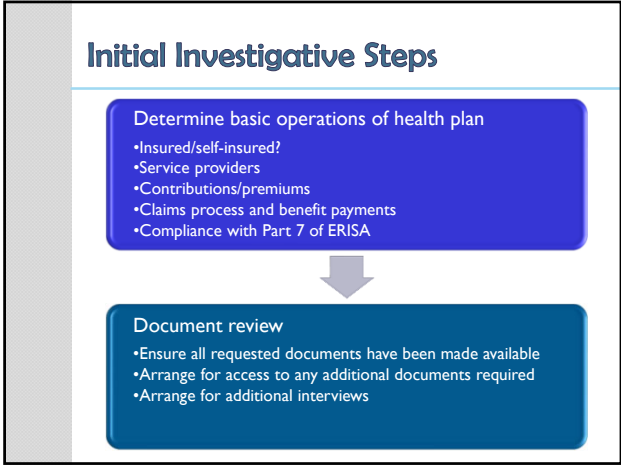
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Investigative Process

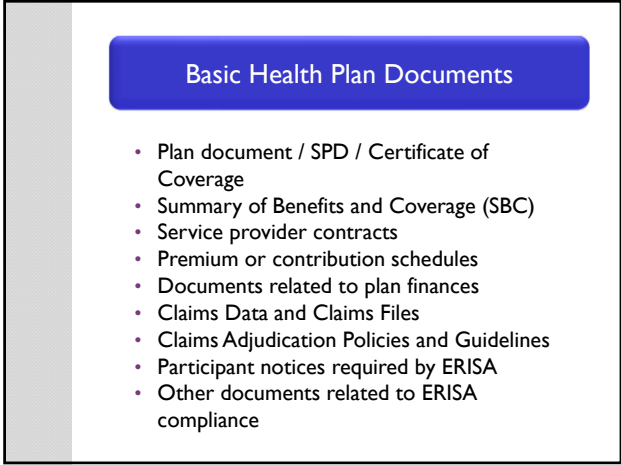
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Subpoenas

- ERISA grants DOL (EBSA) the power to “enter such places, inspect such books and records and question such persons ... as deemed necessary”
- DOL (EBSA) has the authority to issue subpoenas requiring the production of documents or testimony

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Findings and Follow-Up

- Speak with plan sponsor and service providers to clarify plan terms to determine if violations of the health laws or other systemic problems exist
- Determine the extent and impact of harm to participants and beneficiaries due to violations
- Determine the most appropriate action to take to correct the problem
- Work with service provider (if applicable) to make global corrections for all affected plan clients

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Voluntary Compliance Letter

- Identifies problems
- Offers chance to discuss corrective action
- If corrective action is not taken, potential referral to the Solicitor's Office

Closing Letter

- Identifies problems & corrective actions taken
- Indicates the case is closed

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Correction & Voluntary Fiduciary Compliance Program

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Corrections Pre-Investigation

- EBSA encourages self-correction
- Fiduciaries should regularly review operations
- Health Law Self-Compliance Tool
- Upon detection, take corrective action(s)
- Correction guidance is in VFCP documentation
- Call EBSA for compliance assistance

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Correction During Investigation

- Often, potential problems become clear during the investigation
- If problem is identified, work with EBSA to make corrections
- Correction guidance may be available
- Proof of correction and number of participants and plans affected is required

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Depending on the circumstances, appropriate corrective action may include:

- Settlement agreement
- Notification to P's and B's of the correction
- Implementation of new internal controls
- Re-adjudication of claims
- Paying unpaid claims
- Payment of Plan's administrative costs and expenses
- Interest
- Disgorgement of profits or surcharge
- Penalties
- Removal of fiduciaries
- Removal of service providers
- Appointment of independent fiduciary

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Criminal Referrals

- Theft or embezzlement
- Health care fraud
- Kickbacks or bribes
- False statements to investigators
- Willful failures to file or false filings

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Voluntary Fiduciary Correction Program (VFCP)

- "Self-help" program
- Correction methods specified in regulations
- Submit complete applications to Regional Office
- EBSA issues "No Action" letter
- Some transactions eligible for excise tax relief

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Health Plan Compliance Resources

EBSA website (health plans):
<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/health-plans>

Health Benefits Laws Self Compliance Tools:
<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/health-plans/hbec/checksheets>

Health and Human Services
www.hhs.gov/healthcare

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Compliance Assistance

EBSA main site: www.dol.gov/agencies/ebsa

EBSA Affordable Care Act page:
www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers

EFAST2 website: www.efast2.dol.gov

Technical Assistance and Publications:
askebsa.dol.gov or 1-866-444-3272

EFAST2 Hotline (Toll-free):
 1-866-GO EFAST (1-866-463-3278)

Form M-1 Filings:
<http://www.askebsa.dol.gov/mewa/> or call the
 Form M-1 Help Desk at 202-693-8360

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Compliance Assistance

Office of Health Plan Standards & Compliance Assistance
(202) 693-8335

Office of the Chief Accountant
(202) 693-8360

Office of Regulations & Interpretations
(202) 693-8500

Office of Exemption Determinations
(202) 693-8540

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Publications

- Understanding Your Fiduciary Responsibilities under a Group Health Plan
- Reporting and Disclosure Guide for Employee Benefit Plans
- An Employer's Guide to Health Benefits under COBRA
- Health Benefits Coverage Under Federal Law

Outreach Events

- Health Benefit Education Campaign two-day seminar
- Webcasts
- Regional workshops

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www.dol.gov/agencies/ebsa

Subscribe to the EBSA website to receive alerts on new guidance and events

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