

Monitoring Health Plan Fees Is Always a Good Fiduciary Practice

A friendly reminder to us all should be gleaned from a recent decision (*Acosta v. Chimes District of Columbia, Inc.*) that health plan fees must be monitored and a good fiduciary process are the best defenses to claims. This case was decided in favor of the defendants (the plan sponsor) and provides a roadmap of the health plan fiduciary standards for reviewing plan fees and expenses.

I focus on non-legal aspects of the standards and how plan sponsors should operate in a prudent manner. Up until now, ERISA lawsuits related to the reasonableness of monitoring fees has been an extreme focus of retirement plans and very little if any focus has been on monitoring fees of health plans.

Chimes District of Columbia, Inc. (Company) retained FCE Benefit Administrators (FCE) as a third-party administrator (TPA) to handle claims and assist with a stop loss insurance program. FCE was paid a per-employee-per-month fee, which decreased as the number of participants increased, and a percentage of total plan contributions. FCE also was obligated to return to the plan any rebates, discounts, commissions, or fees that FCE received from third parties.

The analysis of this case seems to be almost identical to retirement plan cases and if there was a process in place to monitor fees. In this case, the Company delegated its fiduciary duties to an outside party to administer the plan and to an individual defendant to act as trustee. However, the Company's primary obligation was to monitor the others. The case cited a DOL Interpretive Bulletin, requiring plan sponsors to monitor and conduct reviews in reasonable intervals as needed to ensure satisfactory performance.

The documentation from the case indicated that the Company in fact:

- Regularly reviewed the prudence of the selection of the TPA
- Monitored service providers and requested information from similar entities of their TPA regarding their fees
- Renegotiated fees to the plan's benefit
- Held annual meetings with the TPA and Trustee
- Reviewed annual reports and used an outside auditor
- Required outside auditing of the plan
- Established a process to monitor the administrative and claims processes

As an additional note, the decision rejected a DOL position that ERISA in fact requires RFPs to ensure the lowest costs and does not require the cheapest option for participants.

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Action Plan for Employers:

Each case is always unique. However, as demonstrated in this case, the process used to monitor the health plans, including regular review of TPA services and fees, reliance on retained advisors, as well as monitoring of agreements on a regular basis, are always a good practice and defense.

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