

Fiduciary Issues for Welfare Plans

There has been an ever-increasing application and enforcement of Title I fiduciary and prohibited transaction rules to the administration of health and welfare plans. Historically, these rules have not been enforced as strictly with respect to health and welfare plans as retirement plans. This is changing rapidly due to increased Department of Labor (DOL) regulations and enforcement and to the sophistication of the plaintiff's bar. We are teamed up with some of the largest plan sponsors and managed care providers in ensuring plan compliance and in developing new products and services. The attorneys who work in this area include fiduciary experts and industry leaders who have focused exclusively on these issues for 25 years. Representative Employee Retirement Income Security Act (ERISA) issues that we routinely address in the health and welfare context include:

- Compliance with ERISA's trust requirement (the handling of "administrative services only" funds).
- The fiduciary status of managed care organizations.
- The developing standard of review for benefit claims, claims processes, "prohibited transactions" in managed care organization compensation arrangements, hospital differentials, co-payments, provider discounts and rebates.
- Influencing and interpreting the DOL's new proposed and final rules on reporting and disclosure of compensation arrangements.
- Advising on the use of assets in overfunded voluntary employees' beneficiary associations (VEBAs), funding of active and retiree benefits, and revising plan document and summary plan descriptions.
- Revising our clients' health benefits to be more cost effective and to meet changing workplace needs.
- Assisting companies in their negotiations and contracting with health network providers, pharmacy benefit managers, and third party administrators.