

Publications

Department of Labor Continues Focus on Eligibility Requirements for Group Life Insurance

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SERVICES

The Department of Labor (“the Department”) recently announced that it entered into settlement agreements with two group life insurance carriers regarding the carriers’ evidence of insurability (“EOI”) practices. These recent settlements underscore the Department’s continued focus on the fiduciary duties of group life insurance carriers relating to eligibility for coverage, just over a year after the Department announced its first settlement agreement with another carrier on the same issue. This alert summarizes the key components of the Department’s recent settlement agreements.

Evidence of Insurability

“Evidence of insurability” refers to the requirement that a participant meet certain health criteria set by the carrier in order to be eligible for the participant’s requested amount of group life insurance coverage. Group life insurance policies frequently require EOI when a participant applies for coverage that exceeds the guaranteed issue amount, seeks to increase the amount of coverage beyond a specified threshold, or enrolls in coverage late. The exact contours of the EOI requirement are specific to each group life insurance policy.

Responsibilities of Carriers and Policyholders in the ERISA Context

The Department’s recent focus on EOI highlights the dichotomy between the roles and responsibilities of group life insurance carriers and policyholders.

When life insurance is provided through an employer-sponsored plan subject to ERISA, employers typically are the policyholders and often the employer (or a delegate of the employer, like a fiduciary committee) is named as the plan administrator. If the employer is acting as plan administrator, it selects the policy and contracts with the group life insurance carrier to provide coverage for benefits pursuant to the terms of the policy. It will also manage or delegate various

administrative responsibilities for their plan, including responsibilities regarding enrollment and billing. The carrier typically is identified in the policy as the claims administrator, *i.e.*, at the time a claim is filed, the carrier has discretion to determine a participant's (or dependent's) eligibility for benefits under the policy and to interpret the policy's terms.

As policyholder and plan administrator, the employer would typically be responsible for identifying when EOI is required and notifying participants of the requirement to submit an EOI application to the carrier for review. The carrier reviews submitted EOI applications and ultimately approves or declines the application for coverage. The carrier notifies the employer and participant of its decision. If the application is approved by the carrier, the employer then begins collecting premium for the coverage for which EOI is required.

Employers deduct premium from employee paychecks and forward the premium to the carrier. Under some arrangements, the carrier generates a bill identifying all participants enrolled in coverage, the coverage amounts that each participant has elected, and the applicable premium amounts. The employer is responsible for reviewing the "list" of enrolled participants and associated premiums to verify accuracy of the bill. This is generally referred to as "list billing." Under other arrangements, which are generally referred to as "self-billing," the employer calculates the premium amount due based on the participants' enrollment elections. The employer sends documentation to the carrier that identifies the total number of enrollees and the elected coverage amounts—but the documentation does not identify each participant's coverage election or the amount of premium collected from each participant. In most instances, the employer (in its role as the plan administrator) retains all documentation relating to the enrollment process, including documentation of each participant's coverage elections.

Through its investigations, the Department identified instances where participants elected coverage for which EOI was required, but the participant did not meet the policy's EOI requirement—because either the participant did not submit an EOI application to the carrier for review, or the application had been submitted and denied by the carrier. In some instances, the employer did not inform the participant of the policy's EOI requirement and/or did not provide the participant with the EOI application. Even though the policy's EOI requirement was not satisfied, the employer, in error, deducted premium for such coverage from the employee and then forwarded the premium to the carrier. In some instances, the employer's error was first discovered by the carrier at the time a benefits claim was filed. The carrier, consistent with the terms of the policy, denied the claim on the basis that the EOI requirement was not satisfied—leaving the beneficiary without the life insurance benefit even though the participant had paid premium for the disputed coverage amount.

Skelton and *Shields* Redefined the Fiduciary Duties of Group Life Insurance Carriers

ERISA imposes twin duties of prudence and loyalty on fiduciaries. ERISA's duty of prudence requires fiduciaries to manage plans with the care, skill, prudence, and diligence, that a prudent man acting in a like capacity and familiar with such matters would use, while ERISA's duty of loyalty requires fiduciaries to discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries. Fiduciaries may be named in the plan documents (*i.e.*, the plan administrator). Parties also may serve as "functional fiduciaries" for certain purposes, *i.e.*, a party is a functional fiduciary to the extent it exercises any discretionary authority or discretionary control respecting management, exercises any authority or control respecting management or disposition of its assets, or has discretionary authority or discretionary responsibilities in the administration of such plan.

In 2022, two circuit courts issued seminal decisions holding that carriers are functional fiduciaries with regard to eligibility and enrollment for group life insurance coverage. On May 6, 2022, the Eighth Circuit issued a decision in *Skelton v. Radisson Hotel Bloomington*, 33 F.4th 968 (8th Cir. 2022) in which it held that Reliance Standard Life Insurance Company breached ERISA's duty of prudence by failing to maintain an enrollment system that would prevent premium from being collected from participants who had not satisfied the EOI requirement, and that it also breached ERISA's duty of loyalty by receiving premium without offering a corresponding benefit. Later that year, on October 4, 2022, the First Circuit issued an opinion in *Shields v. United of Omaha Life Insurance Company*, 50 F.4th 236 (1st Cir. 2022), in which it found that United of Omaha Life Insurance Company ("Omaha") had a fiduciary duty to determine whether employees were eligible for enrollment "within a time that is reasonably proximate" to when Omaha began receiving premium for coverage that required EOI.

The *Skelton* and *Shields* decisions marked a significant change in carriers' understanding of their fiduciary duties. Prior to these decisions, carriers viewed their fiduciary duties as solely related to their role as the claims administrator—*i.e.*, the party that exercises discretion when reviewing claims and making benefit determinations. The *Skelton* and *Shields* decisions held that carriers' fiduciary duties also extend to eligibility and enrollment, and as the settlement agreements described below indicate, the Department has taken the same position.

Key Terms of Department of Labor Settlement Agreements Regarding EOI

The Department has publicly announced four settlements with group life insurance carriers relating to EOI. The first such settlement was announced in April 2023, and a second settlement was announced several months later. In June 2024, the Department announced that it had reached two additional settlements with carriers. The settlements resolved long-standing investigations of the carriers' practices regarding EOI—according to the press releases issued by the Department, some of the investigations had been pending since 2016.

The key terms of the settlement agreements are substantially similar. The settlement agreements make clear the Department's view that group life insurance carriers have a fiduciary duty pursuant to ERISA to ensure that eligibility determinations for coverage requiring EOI are made at or near the time the carrier receives premiums for such coverage. Further, the settlement agreements make clear the Department's view that carriers breach that fiduciary duty by (i) accepting premiums for coverage requiring EOI without timely determining the participant's eligibility for coverage and (ii) then denying claims on the basis that the EOI requirement was not satisfied.

The settlement agreements include the following key requirements related to (i) claims for benefits, (ii) living participants who have failed to satisfy the EOI requirement, and (iii) notices to policyholders:

- **Claims:**

- The carriers are prohibited from denying claims for group life insurance coverage solely due to lack of EOI, where the carrier has received the premiums for the coverage for which EOI is required for at least 90 days (or three months).
- The carriers may deny a claim solely due to lack of EOI where premium for the coverage requiring EOI has been received for less than 90 days (or three months). The carriers are required to return or refund such premiums to the appropriate payee (*i.e.*, the policyholder or the beneficiary).

GROOM INSIGHT: The *Shields* decision held that carriers have a fiduciary duty to make eligibility determinations for each participant from whom it has accepted premiums “reasonably proximate to the acceptance of those premiums.” The settlement agreements make clear that the Department is considering three months to be “reasonably proximate.”

- **Living Participants Who Failed to Satisfy EOI Requirement:**

- The carriers are prohibited from requiring EOI from any living participant who has paid premiums for the coverage requiring EOI for at least one year.
- The carriers may require EOI from living participants who have paid premiums for coverage requiring EOI for less than one year, but only may consider information regarding the health status of the participant arising before the carrier's receipt of the participant's first premium payment.

- **Notices to Policyholders:**

- The carriers are required to notify current and future policyholders that the policyholder must not collect any premiums from any employee for coverage for which EOI is required until the policyholder first confirms that the carrier has approved EOI. If the policyholder collects such premiums without first confirming that the carrier has approved the required EOI, the policyholder may be liable to the beneficiaries of the employees or dependents.

In addition to entering into settlement agreements with the Department, the carriers voluntarily agreed to reprocess denied claims and to provide benefits for claims denied solely on a participant's failure to provide EOI. The time period for voluntary claims reprocessing has varied among the carriers, with some carriers agreeing to reprocess claims going back as far as January 1, 2018. Because the carriers agreed to voluntarily reprocess previously denied claims outside of the settlement agreements, the Department did not pursue penalties related to the denied claims pursuant to ERISA Section 502(l).

The Department's Continued Focus on Eligibility Requirements

The Department has issued press releases regarding the settlements agreements and voluntary claims reprocessing and made the settlement agreements publicly available. By doing so, the Department has made clear its view on carriers' fiduciary obligation to confirm eligibility for coverage within 90 days of accepting premium for such coverage. Further, the Department has made clear that, going forward, group life insurance carriers' practices regarding eligibility for coverage will continue to be an area of focus for the Department. The Department's press releases specifically state that its investigation of other carriers' practices relating to EOI are "ongoing."

The Department's focus on carriers' practices related to eligibility may not be limited to EOI. In the recent press releases, Department officials have stated that the Department will take "appropriate action" against carriers that collect "regular premium payments" and later deny benefit claims "based on technicalities" after the participant passes away. Indeed, the Department's recent settlement agreement with one carrier included terms related to another eligibility issue identified in the course of its investigation.^[1]

GROOM INSIGHT: The Department's recent statements regarding eligibility criteria generally indicate that the Department may soon shift its focus to carriers' practices related to eligibility criteria other than EOI. Carriers should carefully review policy terms related to eligibility determinations. To the extent a carrier determines that a participant is not eligible for coverage for which the carrier received premium, the carrier's denial of the claim may give rise to a breach of fiduciary duty claim.

Further, employers should consider assessing their ongoing risk related to eligibility criteria, including any potential risk associated with their processes for administering the enrollment and billing processes. As previously noted, the settlement agreements make clear that employers may be liable to beneficiaries to the extent the employer collects premium for coverage for which EOI is required without first confirming that the carrier has approved EOI. Employers also may be subject to suit by their carrier. One of the recent settlements specifically provides that the carrier may assert claims against the policyholder due to its failure to properly administer eligibility criteria.

In sum, eligibility criteria remain a hot issue for group life insurance carriers and employers, and it is likely that we will continue to see activity by the Department and private litigants in this area in the near future. We are continuing to monitor these developments.