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Recent DOL Actions Address Impermissible Wellness Programs As Well As Fiduciary Status of Changed Out of Network Provider Payment Methodologies

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The Department of Labor ("DOL") filed a complaint against Macy's, Anthem, and Cigna, alleging that Macy's began using a different provider reimbursement rate for out-of-network charges with respect to the Macy's, Inc. Welfare Benefits Plan ("Health Plan") without updating the out-of-network provider reimbursement methodology outlined in the Health Plan's summary plan description ("SPD") and that the tobacco surcharge Macy's assessed under its wellness program did not comply with the Health Insurance Portability and Accountability Act of 1996's ("HIPAA") wellness rules because it did not allow or disclose the availability of a "reasonable alternative standard" for obtaining the reward. *Acosta v. Macy's, Inc. et al.,* S.D. Ohio, No. 1:17-cv-00541, *complaint filed* 8/16/17, *amended complaint filed* 8/29/17. The DOL claims that the failure to outline the correct out-of-network provider reimbursement methodology in the plan document constituted a breach of fiduciary duty by Macy's as plan administrator, and also by Anthem and Cigna, the third party administrators ("TPAs") of the self-funded Health Plan. The DOL further claims that the wellness program's failure to offer a reasonable alternative standard, and disclose the availability of such standard, was a breach of fiduciary duty, a prohibited transaction, and a violation of the HIPAA wellness rules. Please see the attached memo for further information.

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