Proskauer

Best Practices in Administering Benefit Claims #3 – Dealing with Benefit Assignments

Employee Benefits and Executive Compensation Blog on **October 23, 2019**

Our blog series on best practices in administering benefit claims has thus far stressed the importance of knowing and reading the plan document and summary plan description. This week, we take a look at a plan term that has been the subject of frequent dispute in health and welfare benefits claim litigation—interpretation of plan provisions prohibiting a participant's right to assign benefits to healthcare providers.

Out-of-network medical providers commonly require patients to sign documents that purport to assign their rights to plan benefits to the provider. If this assignment works (if it's valid), it would allow the medical provider to "step into the shoes" of the patient and challenge the amount a plan pays to the provider. This would give the provider direct rights against the plan, including through a plan administrative claim and, if necessary, litigation.

Under ERISA, group health plans are allowed to prohibit benefit assignments and, for a variety of reasons, many plans do so. With a valid anti-assignment provision, plans have successfully defeated claims brought by out-of-network providers seeking additional plan reimbursements.

Anti-assignment provisions must be drafted carefully and clearly so they will accurately reflect the plan sponsor's intentions. Some of the issues to consider include: Will the plan prohibit all benefit assignments? Will it prohibit only the assignment of payment of benefits? Will it only prohibit the provider from commencing action in court? Will it require that providers and participants get the plan administrator's consent before the assignment is valid? Plan sponsors generally have wide latitude to limit, or prohibit altogether, the assignment of benefits.

In considering anti-assignment provisions, there are two other points to remember:

First, ERISA allows participants to designate authorized representatives to act on their behalf through the claims process. This could mean that a provider, an attorney, or any other individual could be appointed to act on behalf of the participant. Unlike a properly designated assignee, however, an authorized representative does *not* step into the shoes of the participant and does not acquire rights independent of the participant. A plan may provide for reasonable procedures that participants must follow in designating authorized representatives, which may facilitate benefit claim administration.

Second, many health plans will have "direct payment" provisions whereby the plan will pay out-of-network benefits directly to a provider as a convenience to the participant. A properly drafted anti-assignment clause will distinguish between a permissible direct payment arrangement from a prohibited assignment of benefits. This is an important and difficult provision to draft, and counsel should be consulted on this point.

Next week, we'll discuss the importance of knowing and understanding the applicable law and regulations on benefit claim and appeal procedures.

View Original

Related Professionals

- **Russell L. Hirschhorn**
  Partner