

THE AFFORDABLE CARE ACT

Meredith J. Sesser, Esq.
BRUCKER & MORRA, APC.
msesser@pensionlawyers.com
310.954.2181

BRUCKER
& MORRA
A PROFESSIONAL CORPORATION

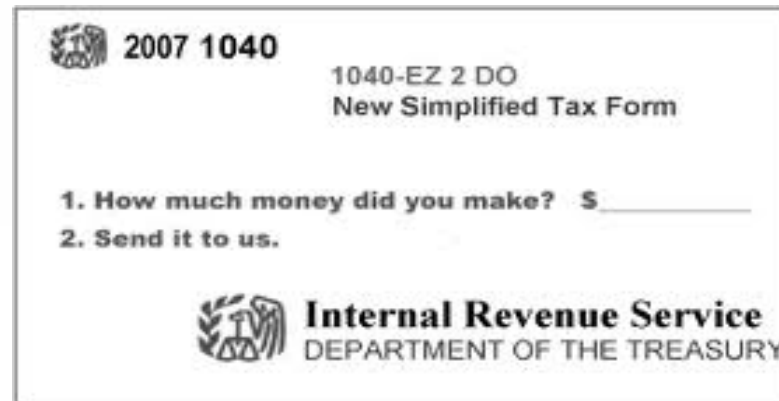
DOL Investigations of Health and Welfare Plans

What triggers an Investigation of a Health and Welfare Plan?

- Audit of a 401(k) or other retirement plan
- Participant complaint
- Random investigation due to additional funding by the government


Why is your Plan being investigated?

Revenue Raising and the attack on pension and welfare plans



2007 1040
1040-EZ 2 DO
New Simplified Tax Form

1. How much money did you make? \$ _____
2. Send it to us.

 **Internal Revenue Service**
DEPARTMENT OF THE TREASURY

DOL... are here to help

I'M FROM THE
GOVERNMENT,
I'M HERE
TO HELP



What will the Department of Labor ask for?

- Plan documents, with all amendments.
- Annual reports (Forms 5500s)
- Summary Plan Descriptions (SPD) or Evidence of Coverage (EOC).
- Summary of Benefits and Coverage (SBC).

What will the Department of Labor ask for?

- Annual Benefits Booklet
- Annual open enrollment packet
- Documents describing the payment of the cost for health and welfare benefits

What will the Department of Labor ask for?

- Fidelity bond.
- HIPAA and COBRA Notices
- All service provider agreements
- All fee disclosures provided to the Plan by service providers

The DOL will look for compliance with...

- Women's Health and Cancer Rights
- The Newborn's Act notice requirements
- The general notice requirements of a preexisting condition issued to enrollees

Common failures discovered during a DOL investigation

- Affiliated Service Groups, Controlled Groups and Coverage Issues
- Summary Plan Descriptions and Missing Information
- Medical Loss Ratio Payments
- Timing of Premium Payments
- Violations of the Mental Health Parity and Addiction Equity Act (MHPAEA)

Affiliated Service and Controlled Groups

- Controlled Group – A group of businesses that have common ownership attributes.
- Affiliated Service Group – A group of businesses that have some common ownership attributes
 - Less than otherwise required to form a controlled group, and
 - Perform services for each other.

Affiliated Service and Controlled Groups

If a Controlled Group or Affiliated Service Group exists, employees of the businesses within those groups are considered as employed by 1 employer for purposes of determining whether a company is a large or small employer for ACA

What is an Affiliated Service Group?

An affiliated service group has 2 or more entities, one is a First Service Organization (FSO), which receives services from or shares them with the:

- A - Organization (A-Org) - IRC §414(m)(2)(A))
- B - Organization (B-Org) - IRC § 414(m)(2)(B))
- Management Group

Objectives- Affiliated Service Groups

- A-Org and B-Org groups:
 - Look at the degree to which one group performs services with / for another that has common ownership
- Management Group:
 - Look at one group providing management services to another

Controlled Groups

Three different types of controlled groups:

- Parent-subsidiary = One entity owns the other
- Brother-sister = Entities have common ownership owning each
- Combined groups = mix of the two, at least 1 parent; some “siblings”

Parent-Subsidiary Group

When a “parent” business owns at least 80% of one or more other businesses (the subsidiaries).

Brother-Sister Controlled Groups

The same 5 or fewer common owners (individuals, trusts, or estates) own (directly or by attribution) a controlling interest of 80% in each business and 50% of the ownership is identical.

Brother-Sister Controlled Groups

- Requires the same 5 or fewer persons to have a controlling interest in each organization.
- The term “persons” includes individuals, estates, or trusts. It does not include corporations.

Attribution for Controlled Groups

Constructive ownership, or attribution, rules apply treating a person as owning an interest in an organization that is not actually owned by that person.

Impact of Being an ASG or Controlled Group



Small Employers

Small employers, generally those with fewer than 50 full-time employees, may be eligible for credits and other benefits.



Large Employers

A large employer has 50 or more full-time employees or equivalents.

Impact of Being an ASG or Controlled Group

The size and structure of your workforce—small, large, or part of a group determines what applies to you.

Summary Plan Description

ERISA Section 102 requires a Health and Welfare Plan to have a Summary Plan Description.

Summary Plan Descriptions- Common items missing from the SPD

- Plan Number
- Employer identification Number
- Agent for Service of Process
- Plan Administrator's Name and Address
- Name, title and address of principal place of business for each trustee of the Plan

Medical Loss Ratio Payments

If an insurance carrier spent less than 80% of premium dollars on medical expenses (or 85% for large groups with 51 or more employees), then the carrier must pay a rebate to policyholders by August 1st after the end of the calendar year.

Medical Loss Ratio Payments

Carrier will generally pay the rebate to the employer who may then be responsible for sharing a portion with employees

Were refunds of MLRs in compliance with ERISA?

Timing of Premium Payments

Were premium payments remitted to the carrier timely?

For plans with fewer than 100 participants, it must be no later than the 7th business day following withholding by the employer.

Violations of the Mental Health Parity and Addiction Equity Act (MHPAEA)

- MHPAEA- financial requirements (such as co-pays, deductibles) and treatment limitations (such as visit limits) for mental health or substance use disorders can be no more restrictive than those applied to all medical/surgical benefits.
- MHPAEA applies to plans with more than 50 employees

QUESTIONS

This presentation should not be construed
as, nor is it intended to provide, legal
advice.

THANK YOU

Speaker:

Meredith J. Sesser, Esq.
BRUCKER & MORRA, APC.
msesser@pensionlawyers.com
310.954.2181

