

ERISA CONFUSION

Current Litigation May Spawn More of the Same

SEVERAL ERISA lawsuits recently have been decided or will be ruled upon in the coming months, but these decisions likely will do little to clear up many compliance questions.



In fact, any rulings on the current litigation simply will determine how many more suits involving 401(k) plans and the Employee Retirement

Income Security Act will spring up next, according to a report by the law firm Spencer Fane Britt & Browne.

Many of the current lawsuits revolve around "pay to play" arrangements in which service providers allegedly agree to include investment companies on their list of fund options for 401(k) plans if the companies agree to funnel undisclosed fees (often called revenue sharing payments) to the service providers, the report said.

A federal judge in Iowa recently refused to classify one of these lawsuits involving the Principal Financial Group as a class-action suit. The suit, filed by a plan sponsor, would have represented as many as 57,000 401(k) plans.

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MORE AMERICANS COVERED

U.S. Uninsured Rate Dips; Effect on Costs Unknown

A RECENT GOVERNMENT report found that the number of uninsured in the U.S. dropped in 2007, but such a decline likely won't have much affect on health care premiums, according to new research.

The Census Bureau announced that the number of uninsured Americans last year dipped to 45.7 million, down slightly from 47 million in 2006.

The drop occurred despite the fact that employer-based coverage continued its decline. The report said growth in government health plans such as Medicaid accounted for the overall dip.

Although this reduction in the uninsured might seem to be good news for the nation's overall health care



picture, new research says the rate of uninsured Americans doesn't significantly affect the health care premiums of insured people.

Just \$14.1 billion, or 1.7 percent, of the \$829.9 billion in annual private health insurance costs in the U.S. can be attributed to cost shifting to cover uninsured workers, according to a report published in the August edition of Health Affairs. The report says total medical spending would rise 5 percent, or about \$122.6 billion, if all insured people were fully covered.

Those who were uninsured for any part of this year will spend about \$30 billion out-of-pocket on medical costs and will receive \$56 billion in uncompensated care while uninsured, the report says.

2008 UBA SURVEY

Employers Eye CDHPs, Wellness to Curb Costs

AS HEALTH CARE COSTS continue to rise, more employers are looking to consumer-driven health plans (CDHPs) and employee wellness programs to help control costs, according to the new Health Plan Survey by United Benefit Advisors (UBA).

The 2008 UBA Health Plan Survey, the nation's largest and most comprehensive benchmark survey of employer-sponsored plan design and plan costs, found that CDHPs increased by 43 percent from last year and now make up nearly 13 percent of all plans offered by employers.

The percentage of employees enrolled in these plans nearly doubled, from six percent in 2007 to 11.2 percent this year.



While preferred provider organizations (PPOs) continue to dominate the market, representing 54 percent of plans offered by employers and nearly two-thirds (62.7 percent) of employees enrolled, health maintenance organization (HMO) participation continues to slip. HMOs now represent just 21.3 percent of plans offered, with only 13.3 percent of employees enrolled.

"Certainly the continued growth of CDHPs is a key headline to come out of this year's survey,"

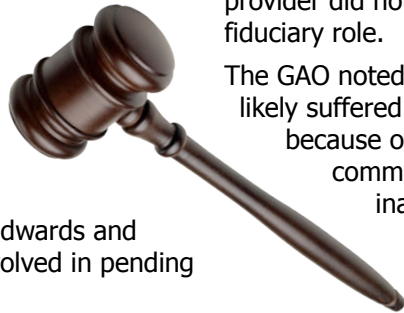
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ERISA Confusion Continued...

The plaintiff had claimed Principal, which had made revenue sharing deals with investment companies, violated ERISA laws by compensating itself with plan assets through its arrangements with the investment companies and failing to disclose details of those arrangements.

Nearly 30 other ERISA cases are alive in federal and appellate courts. Most of these are claims filed by plan participants against employers and plan fiduciaries, although many service providers, including ING, AG Edwards and Fidelity, also are involved in pending ERISA action.

As these lawsuits linger, the Government Accounting Office (GAO) has renewed its push to amend ERISA laws to require service providers to better disclose



compensation arrangements. The GAO cites a recent analysis that found that plan sponsors face big challenges in fulfilling their fiduciary duties when they lack information about their service provider's arrangements.

The study by PLANSPONSOR also found several instances in which sponsors assumed they had delegated fiduciary responsibility regarding investment advice to the service provider, but the service provider did not assume that fiduciary role.

The GAO noted that some plans likely suffered financial harm because of this lack of communication and inadequate disclosure of revenue-sharing deals made by the service providers. ■

said Bill Stafford, UBA's vice president of member services. "Fee For Service/ Indemnity and Exclusive Provider Organizations now have virtually disappeared from the market, and HMOs are losing ground as employers seek to help contain the rising cost of health care and insurance premiums."

In particular, the Northeast saw nearly a 90 percent increase in the number of CHDP plans being offered. The Southeast also saw a large jump in CDHP offerings with an increase of approximately 50 percent.

Wellness Programs

Recognizing that preventing illness is typically far less expensive than treating it, employers are increasingly offering comprehensive wellness programs to their employees, the report said. In fact, 9.8 percent of employers offer wellness programs in 2008, compared with 7.4 percent in 2007.

Of the employers that offer wellness programs, more than three-fourths (78.7 percent) include health-risk assessments. More than a third (34.5 percent) include seminars or workshops, and 39.1 percent include on-site coaching or coaching by telephone for high-risk employees. Fifty-one percent offer incentives to employees for participating, and 40.2 percent offer screenings or exams.

Coverage costs

Health care coverage continues to be a significant cost to both employees and employers. The survey found that the average annual health plan cost per employee is \$7,327 (medical coverage only), with employees paying \$3,210 and employers footing the bill for the remaining \$4,117.

Average monthly premiums for all plans were \$370 for single coverage and \$901 for family.

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.....**Bulletin Briefs**.....

◆ A report issued this month opposes the commonly held belief that older workers are more vulnerable during the current economic downturn. An analysis of employment numbers by Challenger, Gray & Christmas found that employment among U.S. workers age 55 and older grew by 3.7 percent as of July 2008 compared with July 2007.

◆ A new report found that nearly half of the HIPAA complaints handled by a Health & Human Services office have been resolved without any investigation. Also, the review found that HHS's Office of Civil Rights has referred only 437 complaints, less than 2 percent of the total, to federal prosecutors.

◆ A new revision issued by the Internal Revenue Service explains how a child whose parents are divorced, separated or living apart can be treated as a dependent by both parents. The IRS now permits a limited exception that allows a child to be treated as the dependent of both parents (whether or not the custodial parent releases the claim to the exemption). To learn more, visit <http://www.irs.gov/pub/irs-irbs/irb08-36.pdf>. ■

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