

A black and white photograph of a modern office interior. In the foreground, two men are looking at a laptop. In the background, two women are reviewing documents, and another woman is working on a laptop. The office has large windows with a grid pattern, and a bright green decorative shape is in the top right corner.

# Preparing for a DOL Health Plan Audit

Presented by: Preferred Benefits Services Agency Inc.



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# Introduction

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# Today's Agenda

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- Overview of DOL audits
- Audit triggers and process
- Plan compliance review
- Plan document requirement
- Reporting and disclosure
- Fiduciary responsibility
- Affordable Care Act and group health plan requirements
- Recordkeeping



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# Overview

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# ERISA

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## Employee Retirement Income Security Act

- Enacted in 1974
- Sets minimum standards for pension and welfare plans provided by employers to protect employees

## Title I: Protection of Employee Benefit Rights

- Part 1: Reporting and Disclosure
- Part 4: Fiduciary Responsibility
- Part 5: Administration and Enforcement
- Part 6: COBRA Continuation Coverage and Additional Standards for Group Health Plans
- Part 7: Group Health Requirements (HIPAA, NMHPA, MHPA, WHCRA)

# Department of Labor (DOL) Audits

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## DOL has broad authority to audit compliance with ERISA

- Audits performed by Employee Benefit Security Administration (EBSA)
- Focus is on ERISA compliance
  - Fiduciary obligations
  - Reporting and disclosure
  - Group health plan requirements
  - Compliance with [Affordable Care Act \(ACA\)](#)

# Serious Consequences

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Health plan audits are on the rise due to ACA enforcement

- Audits are stressful and time consuming
  - Disruption of day-to-day operations
- ERISA violations can be costly
  - Penalties
  - Corrective action
  - Civil litigation and criminal prosecution

During 2015 fiscal year, most DOL investigations resulted in penalties or other corrective action for employers or benefit plans

# Minimize Your Risk

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- Important to know how to prepare for (and potentially avoid) an audit
- Best time to analyze whether you are ready for an audit is **before DOL knocks on your door**



# Key Action Items

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**Understand common audit triggers  
and audit process**



**Confirm compliance with applicable  
law**



**Maintain documents to show  
compliance**



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# **Audit Triggers and Process**

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# Common Audit Triggers

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## Participant complaints

- Plan participants may complain to the DOL about ERISA violations
- In fiscal year 2015, participant complaints triggered 589 new DOL investigations

## Form 5500

- Incomplete or inconsistent information is reported on plan's Form 5500

## National enforcement priorities

- DOL's national enforcement priorities or projects target agency resources on certain issues
- For example, DOL's Health Benefits Security Project focuses on ACA compliance

# Avoiding an Audit

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## Employers can take steps to help minimize exposure to a DOL audit

- Respond to participant questions and requests for information in a timely manner
- File Form 5500 on time and make sure it's accurate and complete
- Distribute participant materials (for example, SPDs) by deadline
- Keep plan documents up-to-date



# Common Audit Steps

## Step One: Receive Audit Letter

- DOL sends a letter to notify employer it has been selected for audit
- Scope of audits can be full-scale or limited review

## Step Two: Respond to Document Request

- DOL audit letter will request certain plan-related information
- May request a large number of documents

## Step Three: Comply with Deadlines

- Audit letter will include a deadline for providing documents
- Important to respond by deadline
- Late or incomplete responses may trigger additional document requests, interviews, on-site visits, or even DOL enforcement action

# Standard Document Request

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- Plan document
- Summary plan description
- Forms 5500
- Summary annual reports
- List of all plan service providers and related contracts
- All insurance contracts
- Open enrollment materials
- Newborns' and Mothers' Health Protection Act notice
- Women's Health and Cancer Rights Act notice
- Children's Health Insurance Program (CHIP) notice
- Wellness program materials
- Plan provisions for mental health benefits
- HIPAA compliance documents
- COBRA compliance documents
- Notice of grandfathered status (if applicable)
- Information on coverage rescissions, including 60-day advance notice
- Plan provisions on annual and lifetime limits
- Plan enrollment rights for dependents up to age 26
- Summary of benefits and coverage (SBC) and any 60-day advance notices of material changes
- For non-grandfathered plans, notice of patient protections and selection of providers
- Procedures for claims and appeals

# Prepare for Investigation

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If you are selected for audit, consider these steps:

- Establish contact person at company
- Consider hiring legal counsel
- Negotiate or clarify scope of document request and ask for deadline extension, if necessary
- Review documents for accuracy and consider providing explanation of any discrepancies
- Prepare staff for on-site visits and interviews

# Possible Audit Outcomes

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Correction of  
noncompliance

Penalties

Litigation





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# Compliance Review

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# Health Plans Subject to ERISA

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Most health plans maintained by private sector employers are subject to ERISA

## Subject to ERISA

- Corporations
- Partnerships
- Sole proprietorships
- Nonprofit organizations

## Exempt from ERISA

- Governmental plans
- Church plans

# ERISA Requirements

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**Plan Document**

**Reporting and  
Disclosure**

**Fiduciary  
Responsibility**

**ACA**

**COBRA**

**Group Health Plan  
Requirements**



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# Plan Document

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# Plan Document

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- Every ERISA plan must have a **written plan document** describing the benefits provided
- Wrap document for insured benefits
  - Insured benefits controlled by terms of contracts/policies
  - Wrap document is combined with contract/policy to provide missing provisions
  - Wrap plan can include multiple benefits

# Plan Document Provisions

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## Plan document should address:

- Benefits and eligibility
- Funding of benefits
- Treatment of insurance refunds and rebates
- Standard of review for benefit decisions
- Designation of named fiduciary
- Plan amendment and termination procedures
- Required provisions for group health plans
- Other substantive provisions applicable to certain plans (such as subrogation and reimbursement clauses and coordination of benefits provisions)
- Procedures for allocating and delegating plan responsibilities



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# Reporting and Disclosure

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# Summary Plan Description (SPD)

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- Document used to communicate plan benefits, rights and obligations
- Terms will generally be enforced if more beneficial to participants than the plan document
- Most plans must have an SPD
  - Very limited exceptions apply
  - No exception for small plans
- Provided by Plan Administrator
  - Even if another entity drafts the SPD



# SPD Distribution

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## Deadlines

- Provide within 90 days after participant becomes covered under the plan
- Updated SPD must be provided every 5 years (10 years if no changes)

## Approved Distribution Methods

- First-class mail
- Hand delivery
- Electronic distribution if requirements met

# SPD Content

## ERISA provides detailed content requirements for welfare plan SPDs

- Plan identifying information
- Description of benefits and eligibility rules
- Statement regarding circumstances causing loss or denial of benefits
- Description of amendment, termination and subrogation provisions
- Information regarding contributions and funding
- Claims procedures
- Statement of ERISA rights
- Additional group health plans requirements
- Prominent offer of assistance in a non-English language (if required)

**Insured plans:** Insurance booklet will usually **not** meet requirements  
**Solution:** **Wrap SPD document** that contains ERISA elements

# Summary of Material Modifications (SMM)

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- Material changes to information contained in SPD must be communicated to plan participants
- Plan Administrator can use a summary of the material modifications instead of issuing a new SPD
- Deadlines:
  - 210 days after the end of the plan year in which a modification is adopted
  - If change is a material reduction in group health plan benefits or services, deadline is 60 days after date of adoption
  - ACA imposes 60-day advance notice rule

# Summary of Benefits and Coverage (SBC)

- Short summary of benefits and coverage under the plan required by the ACA
- Must be provided by Plan Administrator and insurer
  - Non-duplication rule allows one party to distribute SBC
  - At enrollment, re-enrollment and upon request
- Must provide **60 days' advance notice** of any material modification of plan terms or coverage not reflected in most recent SBC

Coverage Period: [See Instructions]

Summary of Benefits and Coverage: What this Plan Covers & What it Costs      Coverage for: \_\_\_\_\_ | Plan Type: \_\_\_\_\_

 **This is only a summary.** If you want more detail about your coverage and costs, you can get the complete terms in the policy or plan document at [www.\[insert\]](#) or by calling 1-800-[insert].

Important Questions	Answers	Why this Matters:
What is the overall <u>deductible</u> ?	\$	
Are there other <u>deductibles</u> for specific services?	\$	
Is there an <u>out-of-pocket limit</u> on my expenses?	\$	
What is not included in the <u>out-of-pocket limit</u> ?		
Is there an overall annual limit on what the plan pays?		
Does this plan use a <u>network of providers</u> ?		
Do I need a referral to see a <u>specialist</u> ?		
Are there services this plan doesn't cover?		

OMB Control Numbers 1545-2229,  
1210-0147, and 0938-1146

Released on April 23, 2013 (corrected)

Questions: Call 1-800-[insert] or visit us at [www.\[insert\]](#).  
If you aren't clear about any of the underlined terms used in this form, see the Glossary. You can view the Glossary at [www.\[insert\]](#) or call 1-800-[insert] to request a copy.

# Participant Requests for Documents

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- The Plan Administrator must furnish certain documents upon written request by a participant or beneficiary
  - Latest SPD, SMMs and annual report
  - Any bargaining agreement, trust agreement or contract
  - Any other “instrument under which the plan is established or operated”
- Documents must also be available at plan office
- Copies must be provided within 30 days (reasonable copying fees may be charged)

Penalties of up to \$110/day may be assessed for failing to respond to request

# Form 5500 Reporting

**Many ERISA plans must report plan information to the DOL each year using Form 5500**

## Small Welfare Plan Exemption

- Fewer than 100 covered participants at the beginning of the plan year (includes employees, not dependents)
- Must be unfunded (benefits paid from general assets of employer) or insured (benefits paid through an insurance policy that is not stop-loss insurance) or a combination
- Can accept participant contributions if conditions met



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# **Fiduciary Responsibility**

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# ERISA Fiduciaries

Anyone performing fiduciary functions is an ERISA fiduciary

Fiduciary  
functions

- Exercising discretionary authority or control regarding management of an ERISA plan
- Exercising any authority or control over management or disposition of plan assets
- Rendering investment advice for a fee
- Having discretionary authority or responsibility in administration of the plan



# Fiduciary Duties

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- **Duty of Undivided Loyalty**
  - Act solely in the best interest of plan participants and beneficiaries
- **Exclusive Benefit Rule**
  - To use plan assets for the exclusive purpose of paying plan benefits or reasonable expense of plan administration
- **Prudent Person Standard**
  - To act with the care, skill, prudence and diligence that a prudent person in similar circumstances would use
- **Duty to Diversify Investments**
  - To diversify the plan's investments to minimize the risk of large losses
- **Duty to Act in Accordance with the Documents Governing the Plan**

# Fiduciary Issues

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## Settlor Functions

- Fiduciary duties do not apply
- Include business decisions such as amending and terminating plans

## Delegating Fiduciary Duties

- Duties can be delegated to others if permitted by the plan
- Plan sponsor retains ultimate responsibility

## Fiduciary Breaches

- Personal liability for damages or profits
- DOL may assess a **20 percent penalty**
- Removal
- Criminal penalties
- Voluntary correction program is available



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# Affordable Care Act

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# ACA

## DOL is using audit authority to enforce compliance with certain ACA mandates

### Grandfathered Plans

- Records supporting grandfathered status
- Participant notice regarding grandfathered status

### Non-grandfathered Plans

- Coverage of preventive care services
- Participant notice regarding patient protections
- Claims and appeals procedures

### All Plans

- Enrollment opportunities for children up to age 26
- Information on any coverage rescissions
- Lifetime and annual limits
- Summary of benefits and coverage (SBC)

# ACA

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## DOL audit requests may also include:

- Prohibition on excessive waiting periods
- Required coverage for clinical trial participants
- Prohibition on pre-existing condition exclusions for all enrollees
- Cost-sharing limits on essential health benefits (out-of-pocket maximum)



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**COBRA**

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# COBRA

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- Requires most group health plans to provide a **temporary continuation of group health coverage** that otherwise might be terminated due to:
  - Termination of employment or reduction in hours
  - Death of or divorce/legal separation from the employee
  - Loss of dependent status under the plan
- Plan administrators are required to provide **COBRA notices** to plan participants and qualified beneficiaries
- Employers may charge up to 102% of the cost of coverage

# Who Must Comply with COBRA

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## Must comply:

- All private-sector group health plans maintained by employers that have at least 20 employees on more than 50 percent of business days in previous calendar year
- Plans sponsored by state and local governments

## Not Required to Comply:

- Health plans sponsored by:
  - Federal government
  - Churches and certain church-related organizations





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# **Group Health Plan Requirements**

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# HIPAA

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## Health Insurance Portability and Accountability Act

Key provisions govern:

- Health coverage portability
- Health information privacy and security
- Administrative simplification

# HIPAA Portability Rules

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Previously required certificates of prior creditable health coverage (through 2014)



Provide special enrollment rights when specific events occur (like marriage or birth of a child)



Prohibit discrimination in group health plan eligibility, benefits, and premiums based on specific health factors



Guarantee that health coverage be available to, and can be renewed by, certain employers (expanded by ACA)

# Other Group Health Plan Requirements

## Newborns' and Mothers' Health Protection Act (NMHPA)

- Requires minimum hospital stays after childbirth
- Notice must be included in SPD

## Mental Health Parity

- Requires plans that cover mental health and substance use disorders to maintain parity between these benefits and their medical/surgical benefits

## Women's Health and Cancer Rights Act (WHCRA)

- Requires benefits for reconstructive surgery following mastectomy
- Notice must be provided at enrollment and annually

## Children's Health Ins. Reauthorization Act (CHIPRA)

- Provides special enrollment rights for employees and their dependents
- Annual notice requirement for employers in states that provide premium assistance subsidy



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# Recordkeeping

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# Recordkeeping System

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**Establishing a recordkeeping system for important benefit plan documents is a key step in preparing for a DOL audit**

- Retaining complete and accurate records helps:
  - Move the audit process along
  - Provide accurate picture of your employee benefits
- Keep copies of participant notices and records showing distribution
- As a general rule, keep these records for at least **seven years**
- If service provider keeps records, verify retention and availability

# Recordkeeping System – Example

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## Rule

- Plans that require designation of a primary care provider must provide a **notice of patient protections** whenever the SPD or similar description of benefits is provided to participants

## Recordkeeping

- Keep a copy of the notice of patient protections
- Document when it was provided
- Keep list of participants who received it



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**Questions?**

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# Thank you!

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