DOL Confirms that Call Recordings Subject to Claims Requirements

June 22, 2021

On June 14, 2021, the DOL published Information Letter 06-14-2021, confirming that a copy of an audio recording and transcript of a telephone conversation between a participant and the plan’s insurer had to be provided to the participant.

The party requesting the DOL information letter represents a participant whose request for the audio recording was denied. The participant sought after the recording after receiving an adverse benefit determination. The insurer denied the request, arguing that the recordings were for quality assurance purposes and could not be relied upon for claims administration purposes.

The DOL did not agree with the insurer’s interpretation of this issue. ERISA Section 503 requires plans to give participants a reasonable opportunity to conduct a full and fair review of the decision denying the claim, and that would involve providing copies of all documents, records and other information relevant to the participant’s claim for benefits. For those purposes, a document or other record is relevant to the participant’s claim if the information can be characterized as one or more of the following:

1. Was relied upon in making the benefit determination
2. Was submitted, considered or generated in the course of making the benefit determination, without regard to whether such document, record or other information was relied upon in making the benefit determination
3. Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5)
4. Constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant’s diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination

The DOL homed in on the second numeral above in pointing out that the requested records didn’t have to be the basis for the benefit determination in order to be required. The DOL also discussed the fact that the third reason above would make it appropriate for a call recording to be provided since a quality assurance call would demonstrate compliance with the administrative processes and safeguards in place.

Finally, the DOL confirmed that nothing in the claims regulations indicates that only paper records may be requested. So, the fact that the requested record was an audio file was of no consequence in the analysis of whether the record needed to be turned over.

Accordingly, pursuant to ERISA’s claims regulations, a recording or transcript of a conversation with a claimant would be required to be provided to that claimant if they request it. Any plan administrator that receives such a request should likely honor it unless they receive other advice from legal counsel.

Information Letter 06-14-2021 »

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