U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

June 14, 2021

Cassie Springer Ayeni
President and Managing Attorney
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Oakland, CA 94611

Dear Ms. Springer Ayeni:

This responds to your inquiry regarding the claims procedure requirements under section 503 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). In particular, you ask whether ERISA section 503 and the Department of Labor's implementing claims procedure regulation at 29 CFR 2560.503-1 require the responsible plan fiduciary to provide, upon a claimant's request, a copy of an audio recording and transcript of a telephone conversation between the claimant and a representative of the plan's insurer relating to an adverse benefit determination.

You are seeking guidance because you represent a claimant whose request for such a recording was denied. You indicate that the stated reasons for denial of the request for the audio recording are that the actual recording is distinct from the notes made available to you, which contemporaneously documented the content of the recorded conversation, and which became part of the "claim activity history through which [the insurer] develops, tracks and administers the claim." By contrast, the denial stated that the "recordings are for 'quality assurance purposes,'" and "are not created, maintained, or relied upon for claim administration purposes, and therefore are not part of the administrative record."

The Department may, when deemed appropriate and in the best interest of sound administration of ERISA, issue information letters calling attention to established principles under ERISA, even though an advisory opinion was requested. ERISA Procedure 76-1, section 5 (41 Fed. Reg. 36281 (Aug. 27, 1976)). We determined that it is appropriate to respond in the form of an information letter, the effect of which is described in section 11 of ERISA Procedure 76-1.

ERISA section 503 requires every employee benefit plan to "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." The Department's implementing regulations require employee benefit plans to "establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations." 29 CFR 2560.503-1(b). The regulations further require that the claims procedures of a plan will not provide a reasonable opportunity for a full and fair review of a denied claim, unless, among other things, "the claims procedures provide that a claimant shall be provided, upon request . . . copies of, all documents, records, and other information relevant to the claimant's claim for benefits." 29 CFR 2560.503-1(h)(2)(iii).

The regulation at 29 CFR 2560.503-1(m)(8) provides that, for this purpose, a document, record, or other information is "'relevant' to a claimant's claim" if the document, record, or other information:

> (i) was relied upon in making the benefit determination; (ii) 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; (iii) demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5); or (iv) 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.

As subparagraph (ii) states, information is relevant to a claimant's claim if it "was … generated in the course of making the benefit determination," even if it was not "relied upon in making the benefit determination." Consequently, for purposes of subparagraph (ii) it is immaterial whether information was "not created, maintained, or relied upon **for** claim administration purposes." (emphasis added).

Furthermore, with respect to a claim that a recording is not required to be disclosed because it was generated for quality assurance purposes, as noted above, subparagraph (iii) in 29 CFR 2560.503-1(m)(8) states, information is relevant for purposes of the disclosure requirement if it "demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5)."[1] Thus, the fact that a recording was made for quality assurance purposes would support it being subject to a disclosure request for relevant "documents, records, and other information" under 29 CFR 2560.503-1(h)(2)(iii).

Further, nothing in the regulation requires that "relevant documents, records, or other information" consist only of paper or written materials. Rather, in the preamble to recent amendments to 29 CFR. 2560.503-1, the Department recognized that an audio recording can be part of a claimant's administrative record. In responding to commenters' concerns that proposed amendment language would prohibit claimants from submitting audio evidence in support of their claim, the Department clarified that no limit was intended on the types of evidence claimants can submit. In its response, the Department listed "video, audio, or other electronic media" as types of evidence plans cannot refuse to accept. 81 Fed. Reg. at 92325 (Dec. 19, 2016).

In summary, a recording or transcript of a conversation with a claimant would not be excluded from the requirements under 29 CFR 2560.503-1 to disclose relevant "documents, records, and other information" merely because the plan or claims administrator does not include the recording or transcript in its administrative record; does not treat the recording or transcript as part of the claim activity history through which the insurer develops, tracks and administers the claim; or because the recording or transcript was generated for quality assurance purposes.

[1] The claims procedure regulation at 29 CFR 2560.503-1(b)(5) requires that, to be deemed reasonable, claims procedures must, among other things, "contain administrative processes and safeguards designed to ensure and to verify that benefit clam determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants." In this connection, the Department has stated that "a plan must provide a claimant upon request after receiving an adverse benefit determination . . . any information that the plan has generated or obtained in the process of ensuring and verifying that, in making the particular determination, the plan complied with its own administrative processes and safeguards that ensure and verify appropriately consistent decision making in accordance with the plan's terms." 65 Fed. Reg. at 70252 (Nov. 21, 2000).

We hope this information is of assistance to you.

Sincerely,

Eric Berger
Acting Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations