Assignment of Benefits; Plan Limits for 2015; Target Date Funds and Longevity Annuities

Gayle M. Meadors, PC*

COURT CLARIFICATION ON ASSIGNMENT OF BENEFITS UNDER ERISA

There is still confusion for healthcare providers with regard to the provider's ability to sue a healthcare plan for payment under the Employee Retirement Security Act of 1974 (ERISA). There have been only two decisions at the federal appeals level on this subject, the most recent being *Spinedex Physical Therapy v. United Healthcare of Arizona, Inc.* (9th Cir November 5 2014).

The plaintiff in this case, Spinedex Physical Therapy, had patients complete an assignment of benefits form before receiving treatment. Spinedex was out of network. The defendant, United Healthcare, as an insurer and also as the claims administrator for several self-insured plans, denied some of the claims filed by Spinedex.

Spinedex sued United Healthcare for wrongful denial of benefits as well as a breach of a fiduciary duty under ERISA. The first issue addressed by the court was whether Spinedex had standing to sue. The defendant argued that since Spinedex made no effort to collect any copay from the affected plan participant, the participant did not incur an injury, and hence there was no basis to sue. The Ninth Circuit rejected this argument as follows:

> Spinedex's patients assigned the entirety of their claims against the Plans, and Spinedex, as assignee, is permitted to keep all amounts recovered in suits brought on those claims. The fact that Spinedex has chosen not to seek payment from its assignors, despite its contractual right to do so, does not mean that Spinedex had no right to recover benefits under the Plans from Defendants. It means only that Spinedex has decided not to pursue its legal rights against its assignors.
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> The flaw in Defendants' argument is that they would treat as determinative Spinedex's patients' injury in fact as it existed after they assigned their rights to Spinedex. We agree with Defendants that Spinedex has not sought to recover from its patients any shortfall in Spinedex's recovery from the Plans, and that the patients have not suffered injury in fact after assigning their claims. But the patients' injury in fact after the assignment is irrelevant. As assignee, Spinedex took from its assignors what they had at the time of the assignment. At the time of the assignment, Plan beneficiaries had the legal right to seek payment directly from the Plans for charges by non-network health care providers. If the beneficiaries had sought payment directly from their Plans for treatment provided by Spinedex, and if payment had been refused, they would have had an unquestioned right to bring suit for benefits. No one, including Defendants in this suit, would contend that the beneficiaries would have lacked Article III standing in that circumstance. However, instead of bringing suit on their own behalf, plaintiffs assigned their claims to Spinedex.

Once the issue of standing was resolved, the Court addressed the main issue, which was the ability of Spinedex to step into the shoes of the plan participant. The Ninth Circuit stated that if an assignment of benefits was permitted under a plan, the assignee could take the place of the plan participant and sue for benefits. In this case the assignee could not sue for a breach of fiduciary duties due to the language on the assignment of benefits form, which did not refer to fiduciary claims. Had the assignment form been drafted differently, fiduciary claims might have been properly assigned as well. The court further went on to say if a plan did not permit assignment without the consent of the plan (which was the situation in one case) then the assignment of benefits was not enforceable.

The important principles to be derived from this case are that: (1) an assignment of benefits will only be permitted

*Attorney-at-Law, PO Box 541, Naperville, IL 60566; phone: 630-369-4890; e-mail: gmm@erisalaw-chicago.com.
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to the extent the ERISA plan permits such an assignment; and (2) the nature of the assignment will be restricted to those items specifically addressed on the assignment form. It should also be noted that the failure to collect a copay from patients did not preclude the medical practice from obtaining standing. However, not addressed by the court was whether a failure to collect the required copay would serve as an independent basis for the plan to refuse to pay a claim. Caution is urged before a medical service provider decides not to seek patient copayments.

INTERNAL REVENUE SERVICE PLAN LIMITS FOR 2015

The IRS in Notice 2014-70 announced the 2015 limits applicable to various types of retirement plans. The limits are as follows:

- Annual benefit under a defined benefit plan: $210,000
- Defined contribution annual account limit: $53,000
- 401(k)/403(b)/457(b) Elective Deferral Limit: $18,000
- Annual compensation limit: $265,000
- Key employee for top-heavy plan threshold: $170,000
- Highly compensated employee threshold: $120,000
- Catchup contributions for participants over age 50 (not for SIMPLE 401(k)/IRA): $6000

TARGET DATE FUNDS AND QUALIFYING LONGEVITY ANNUITY CONTRACTS

In the Compensation and Benefits Briefs article in the November/December 2014 issue,[1] qualifying longevity annuity contracts (QLAC) under qualified retirement plans were discussed, because regulations were issued by the IRS in July 2014. These are special annuity products that can be offered under a qualified retirement plan that can provide for delayed commencement as late as age 85. The IRS has provided more guidance in Notice 2014-66 with regard to target date funds, a common type of mutual fund offering found under a 401(k) plan which gears investments to be expected retirement age of participants covered by the fund.

The Notice addresses questions arising from the fact that target date funds are offered only to participants whose ages fall into certain parameters and that actuarially it only makes sense to offer a QLAC under a target date fund that covers older plan participants. Various parties had asked whether this approach would be permissible, since older plan participants also tend to be highly compensated participants, and limiting QLAC investments to just that group could be viewed as discriminatory.

The IRS concluded a plan could restrict the target date funds offering QLAC investments provided certain conditions are met. It then provided an example of how a QLAC could be offered and meet nondiscrimination requirements, as follows:

> Each TDF available to participants age 55 or older holds unallocated deferred annuity contracts as a portion of its fixed-income exposure. The deferred annuity contracts are purchased from an insurance company that is independent from the investment manager. None of the TDFs provides a GLWB (guaranteed life withdrawal benefit) or GMWB (guaranteed minimum withdrawal benefit) feature.
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> As the age of the group of participants in such a TDF increases, a larger portion of the assets in the TDF will be used to purchase deferred annuities each year. The TDFs available to participants younger than age 55 do not include deferred annuity contracts. However, the series of TDFs is designed so that, as the asset allocation changes over time, each TDF will include deferred annuity contracts beginning when the participants in that TDF attain age 55.
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> Each TDF is dissolved at its target date. When a TDF is dissolved, a participant who has an interest in that TDF will receive an annuity certificate representing the participant's interest in the annuity contract held in the TDF. The certificate provides for immediate or deferred commencement of annuity payments in accordance with the terms of the annuity contract and the plan. The remaining portion of a participant's interest in that TDF is reinvested in other investment options within Plan A.

On a related matter to the new concept of a QLAC, AIG insurance company announced in November that it had a QLAC available. This contract would not be part of a target date fund, as discussed above, but, rather, would be available for purchase using funds from a qualified retirement plan or an IRA. Since most plan sponsors have not taken any actions to permit a QLAC to be a form of payment, at this point the market for this AIG product would be people with IRAs.

The above discussion is intended to briefly summarize certain recent legal developments in employee benefits, but is not intended to be legal advice and must not be relied upon as such. All readers are urged to raise any concerns they may have based on matters discussed in this column with experienced benefits legal counsel.

REFERENCE

1. Meadors G. Affordable Care Act compliance, new type of annuity contract, and taxation of employer-provided parking. *J Med Pract Manage.* 2014;30:218-219.