U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

February 27, 2019

Mr. Jonathan Sistare
Law Office of Jonathan B. Sistare, PLLC
P.O. Box 213
Dublin, NH 03444

Dear Mr. Sistare:

This responds to your request on behalf of The Justus Group, L3C (Justus) to clarify its ability to act as an authorized representative for claimants in accordance with the Department of Labor's claims procedure regulation, which implements section 503 of the Employee Retirement Income Security Act of 1974 (ERISA). Justus acts as a patient advocate and healthcare claim recovery expert for plan participants and beneficiaries, both at the initial application stage and when claimants appeal adverse benefit determinations.

Under ERISA Procedure 76-1, the Department may, when it is appropriate and in the best interest of the sound administration of ERISA, issue information letters calling attention to established principles under ERISA. We have determined that it is appropriate to respond to your inquiry in the form of an information letter, the effect of which is described in section 11 of ERISA Procedure 76-1.

The Department's claims procedure regulation at 29 CFR 2560.503-1 sets forth minimum requirements for employee benefit plan claims procedures under ERISA. Subparagraph (b)(4) of the regulation expressly gives participants and beneficiaries the right to appoint authorized representatives to act on their behalf in connection with an initial claim for benefits as well as an appeal of an adverse benefit determination. *See* 29 CFR 2560.503-1(b)(4) (The claims procedure of an ERISA-covered plan cannot "preclude an authorized representative of a claimant from acting on behalf of such claimant in pursuing a benefit claim or appeal of an adverse benefit determination.")

The Department's guidance on the claims procedure regulation confirms that authorized representatives are entitled to notifications in connection with initial claim determinations and appeals:

> Nothing in the regulation precludes a plan from communicating with both the claimant and the claimant's authorized representative. However, it is the view of the Department that, for purposes of the claims procedure rules, when a claimant clearly designates an authorized representative to act and receive notices on his or her behalf with respect to a claim, the plan should, in the absence of a contrary direction from the claimant, direct all information and notifications to which the claimant is otherwise entitled to the representative authorized to act on the claimant's behalf with respect to that aspect of the claim (e.g., initial determination, request for documents, appeal, etc.). In this regard, it is important that both claimants and plans understand and make clear the extent to which an authorized representative will be acting on behalf of the claimant.

Benefit Claims Procedure Regulation FAQs, FAQ B-3 (emphasis added) (available on EBSA's website at dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/benefit-claims-procedure-regulation).

Although a plan may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant,[1] the procedure cannot prevent claimants from choosing for themselves who will act as their representative or preclude them from designating an authorized representative for the initial claim, an appeal of an adverse benefit determination, or both.

The plan must include any procedures for designating authorized representatives in the plan's claims procedures and in the plan's summary plan description (SPD) or a separate document that accompanies the SPD. SPDs must satisfy the style and format requirements for SPDs in 29 CFR 2520.102-2, and include a statement that the plan's claims procedures are furnished automatically, without charge, as a separate document. *See* 29 CFR 2520.102-3(s).

We hope this information is of assistance to you.

Sincerely,

Elizabeth Goodman
Acting Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations

[1] *See* 29 CFR 2560.503-1(b)(4) (including the special rule for urgent care claims under which plans must recognize a health care professional with knowledge of a claimant's medical condition as an authorized representative of the claimant without regard to any plan procedures for designating authorized representatives). *See also* FAQ B-1 and B-2 of the Benefit Claims Procedure Regulation FAQs.