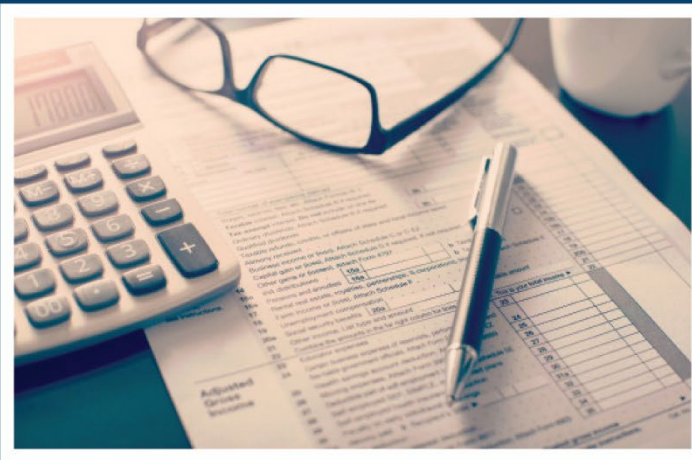


BROKER COMPENSATION DISCLOSURE

SEPTEMBER 2022



Broker Compensation Disclosure Rule and the Group Health Plan Fiduciary Responsibility under ERISA

The Consolidated Appropriations Act (CAA) was signed into law in late 2020 and contains several provisions related to business transparency. Beginning Dec. 27, 2021, as part of the CAA, Covered Service Providers (CSPs)—i.e., insurance brokers and consultants—must disclose all compensation to clients if they expect to receive \$1,000 or more in direct or indirect compensation for providing their services in relation to their ERISA health plans. A disclosure must be made no later than the date that is reasonably in advance of the date on which the contract is entered into, and extended or renewed. Preexisting service arrangements are not subject to the new disclosure rule until a contract renewal or extension occurs.

While the new disclosure rule makes it the responsibility of brokers and consultants to provide plan fiduciaries with the required information, the consequences of noncompliance directly impact plan fiduciaries. If the CSP fails or refuses to disclose compensation information, the plan fiduciary must request full disclosure in writing. If the CSP fails or refuses to respond to the written request within 90 days, the fiduciary must formally notify the Department of Labor within 30 days following the refusal to respond or lapse of the 90-day period.

If a group plan fiduciary does not report the CSP's failure to disclose in a timely manner, they could be subject to fines for a prohibited transaction under ERISA.

As a plan fiduciary under ERISA, it is important for you to be aware of this new compensation disclosure and your responsibility to obtain it if not automatically provided. The disclosure will allow you, as the plan fiduciary, to assess and ensure that your health plans do not pay more than reasonable compensation for the service necessary to operate it, as required under ERISA.

Please feel free to reach out to Lawley for more information on our compensation disclosure.

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