Self-funded Medical Plans: Legal Right to Data

1 Employee Retirement Income Security Act of 1974 (ERISA)

- The Employee Retirement Income and Security Act of 1974, or ERISA, is a federal law that created rules and procedures to protect employee health plans from fraud and mismanagement. It protects the interests of employee benefit plan participants and their beneficiaries.

- ERISA requirements are the bare minimum that you have to follow to comply with law.

- As a plan sponsor, you must follow standards of conduct. ERISA ensures that fiduciaries have the responsibility to monitor fees and ensure that they are reasonable.

- Under ERISA, employees must be notified of benefit plan terms, including funding, coverage, and costs.

- Employees are also offered protections against fiduciary wrongdoing. Plan participants or the DOL may be able to sue plan fiduciaries if plans are mismanaged or if plan fiduciaries engage in conduct prohibited under ERISA, and plan participants may sue for unpaid benefits.

- Potential penalties are that the DOL may assess a civil penalty equal to 20% of the amounts recovered for the plan through litigation or settlement. Also, if found guilty for a willful violation of ERISA's reporting and disclosure requirements, a fiduciary may be subject to fines and/or imprisonment for not more than ten years.

2 Consolidated Appropriations Act

- Must electronically accessing, upon request, de-identified claims information or data for each plan participant, or coverage information on a per claim basis:

1. Financial information, such as the allowed amount, or any other claim-related financial obligations included in the provider contract;
2. Provider information, including name and clinical designation;
3. Service codes; and
4. Any other data element included in claim or encounter transactions.

- Public Health Service Act section 2799B–6, as added by section 112 of division BB of the CAA, requires providers and facilities, upon an individual's scheduling of items or services, or upon request, to inquire if the individual is enrolled in a health plan or health insurance coverage, and to provide a notification of the good faith estimate of the expected charges for furnishing the scheduled item or service and any items or services reasonably expected to be provided in conjunction with those items and services, including those provided by another provider or facility, with the expected billing and diagnostic codes for these items and services.

- If employers don't comply with the fee disclosure requirement, which states the fees they are paying are reasonable, they are susceptible to major legal liability. They must be reported to the Department of Labor.

- Code section 9824, ERISA section 724, and PHS Act section 2799A-9, as added by section 201 of division BB of the CAA, prohibit plans and issuers from entering into an agreement with a provider, network or association of providers, third-party administrator, or other service provider offering access to a network of providers that would directly or indirectly restrict the plan or issuer from:

1. Providing provider-specific cost or quality of care information or data to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage;
2. Electronically accessing de-identified claims and encounter data for each participant, beneficiary, or enrollee; and
3. Sharing such information, consistent with applicable privacy regulations. In addition, plans and issuers must annually submit to the Departments an attestation of compliance with these requirements. These provisions are effective December 27, 2020 (the date of enactment of the CAA).

3

Fiduciary Duties

- A fiduciary duty is **a commitment to act in the best interests of another person or entity**. Broadly speaking, a fiduciary duty is a duty of loyalty and a duty of care. That is, the fiduciary must act only in the best interests of a client or beneficiary. ERISA sets standards of conduct for those who manage employee benefit plans and their assets, called fiduciaries. An ERISA covered group health plan is an employment-based plan that provides medical care coverage, including hospitalization, sickness, prescription drugs, vision, or dental. It can provide benefits by using funds in a plan trust, purchasing insurance, or self-funding benefits from the employer's general assets.

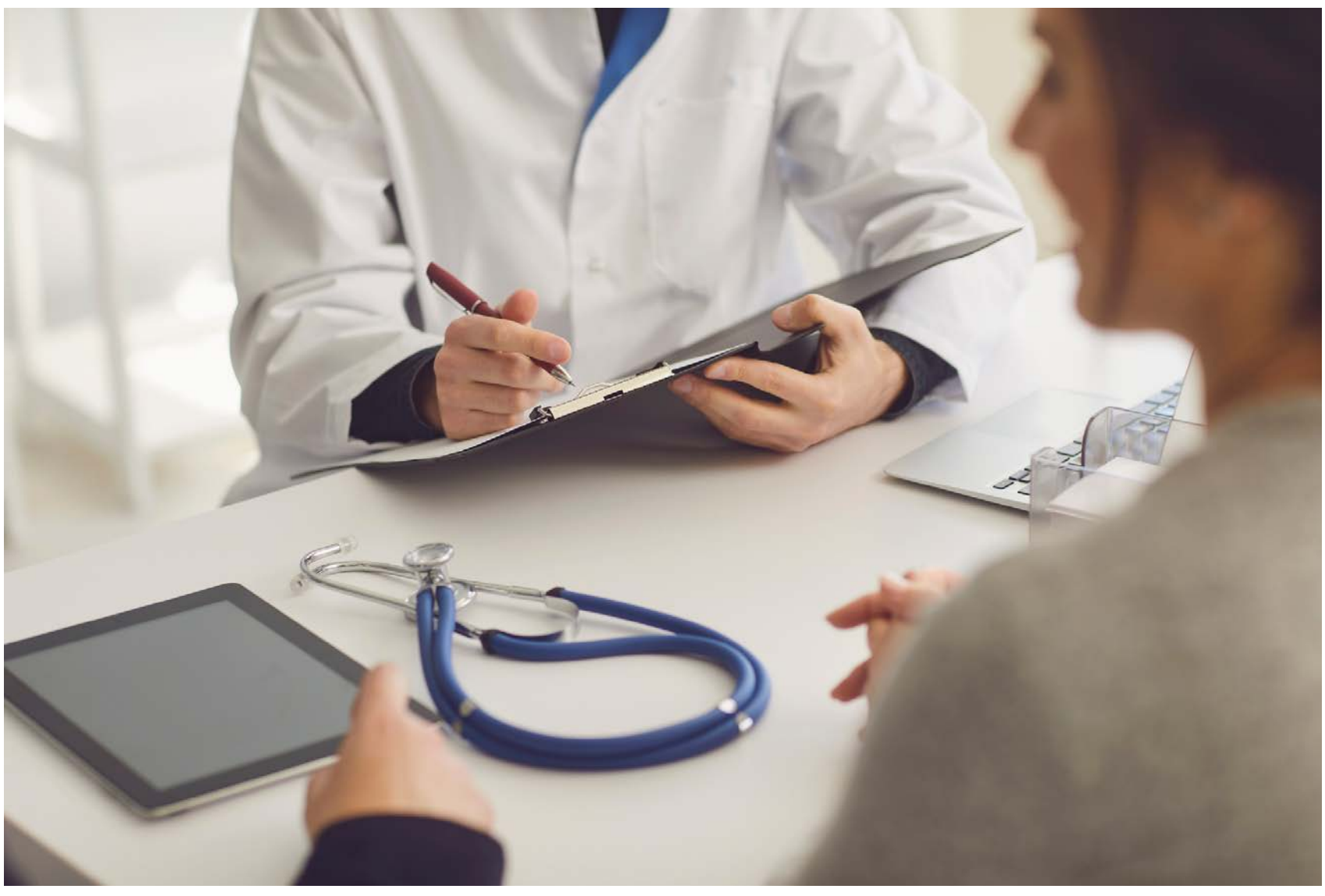
- Act in the sole and best interest of plan participants with an exclusive purpose of providing benefits. You have to carry your duties as a fiduciary prudently.

- You have to follow your plan documents.

- Pay only reasonable plan expenses.

4 Health Insurance Portability and Accountability Act (HIPAA)

- Health Insurance Portability and Accountability Act **(HIPAA)**
- The Health Insurance Portability and Accountability Act of 1996 **(HIPAA)** is a federal law that requires the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge.
- Claims files can be completely de-identified.
- An employer is a covered entity that is owed that data.
- Self-employers should know exactly what their data is. They should know all that is in the claims file, the entirety of the fields, as a carrier must follow this in accordance with claims in order to be compliant with the law.



Digital Health

Claim your data.
Unleash the value.

Your Data.
Your Opportunity.
Your Duty.

We know that data is at the center of business change, enabling organizations to transform their business, operating models, and respond nimbly to competitive threats. Data is a transformative force and it impacts all aspects of the business environment, especially in the context of oversight. Without transparency into data, there can be no oversight. We provide that clarity.

Your data will play a critical role in your success and help you address critical initiatives such as fiscal responsibilities, regulatory mandates, external threats or growth ambitions.

We look forward to helping you drive Clarity, Cost, Control, and Compliance within your health plan.

FOR MORE INFORMATION, PLEASE VISIT
WWW.4CDIGITALHEALTH.COM