August 20, 2024

The Honorable Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Assistant Secretary Gomez:

We write to request information regarding efforts of the Employee Benefits Security Administration (EBSA) at the U.S. Department of Labor (DOL or Department) to address troubling practices of certain group health plan service providers. Recent reports—including a front-page investigation by *The New York Times* regarding a company known as MultiPlan[1]—have drawn attention to practices that negatively impact workers, employers, and health care providers. As leaders of the Committee on Education and the Workforce (Committee), we are committed to working with the Department to address these issues.

As you know, the *Employee Retirement Income Security Act* (ERISA),[2] requires plan fiduciaries to monitor the practices of service providers who contract with employee benefit plans to ensure that all fees paid are reasonable.[3] To assist in this responsibility, Congress has worked in a bipartisan manner to increase transparency through legislation such as the *Consolidated Appropriations Act, 2021* (CAA),[4] which specified both direct and indirect compensation that service providers must disclose to responsible plan fiduciaries. These disclosures are necessary to determine the reasonableness of fees and identify conflicts of interest that can lead to higher costs for both workers and employers.

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[1] Chris Hamby, *Insurers Reap Hidden Fees by Slashing Payments. You May Get the Bills,* N.Y. TIMES (Apr. 7, 2024), https://www.nytimes.com/2024/04/07/us/health-insurance-medical-bills.html.
[2] Pub. L. No. 93–406(1974).
[3] 29 U.S.C. § 1108(b)(2)(A)("… other services necessary for the establishment or operation of the plan, **if no more than reasonable compensation is paid** therefor.") (emphasis added).
[4] Pub. L. No. 116–260 (2020).

Despite the substantial progress that has been made to improve transparency and assist fiduciaries in performing their duties, widespread problems remain. The recent findings of *The New York Times* regarding MultiPlan—a private equity-backed data analytics company that serves many ERISA-covered group health plans—showed that the company profits from lower provider reimbursements that shift costs to consumers, while ultimately increasing compensation for itself and third-party administrators (TPAs).[5] Rather than deliver meaningful savings to workers and employers, the investigation found that lower reimbursements for providers yielded higher fees to MultiPlan and TPAs and cut into employers' presumed savings, while patients were frequently liable for burdensome balance bills. In one instance, a consumer was saddled with a medical bill for over $100,000 after the insurer provided less than $6,000 in reimbursements for treatment received from an out-of-network doctor to manage an infection the patient developed after an operation on her heart. Not only are consumers left responsible for these exorbitant out-of-pocket costs—despite having health insurance—employers in many cases also pay even more in fees to insurers and MultiPlan than the reimbursements paid to health providers.

Regrettably, opaque fee structures and alleged self-dealing are pervasive and have resulted in several recent lawsuits brought on behalf of employers and plan participants who are harmed by higher health care costs.[6] In addition, it remains unclear the extent to which service providers—including TPAs and pharmacy benefit managers[7]—are providing meaningful disclosures of their direct and indirect compensation, as required under the CAA.

We are encouraged by the actions taken by DOL to date. DOL has used funding provided by Congress under the bipartisan *No Surprises Act*[8] to take this issue seriously by establishing a Section 408(b)(2) Welfare Plan Disclosure Working Group.[9] Further, according to the Department itself, DOL has "'a number of open investigations' into the type of pricing services MultiPlan provides."[10] As the Department continues this important work, we request your response to the following questions no later than September 20, 2024, to understand the current enforcement landscape and what Congress can do to support EBSA in these efforts:

1) What are EBSA's current activities with respect to enforcement of the CAA's 408(b)(2) disclosure requirements by covered service providers who are engaging in self-dealing practices?

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[5] Hamby, *supra* note 1.
[6] *See, e.g.*, *Kraft Heinz Company v. Aetna* (Complaint), E. D. Tex. (Jun. 30, 2023), Case 2:23-cv-00317-JRG; *Massachusetts Laborers' Health & Welfare Fund v. Blue Cross Blue Shield of Massachusetts*, 66 F.4th 307 (1st Cir. 2023).
[7] *See* Letter from Rep. Robert C. "Bobby" Scott and Rep. Virginia Foxx to the Honorable Lisa M. Gomez (Dec. 14, 2022), https://democrats-edworkforce.house.gov/imo/media/doc/bipartisan_scott-foxx_letter_to_ebsa_re_health_transparency.pdf.
[8] Pub. L. No. 116–260 (2020).
[9] DEP'T OF LAB. ET AL., FY 2023 REPORT TO CONGRESS ON TRANSPARENCY OF IMPLEMENTATION FUNDS FOR TITLE I (NO SURPRISES ACT) AND TITLE II (TRANSPARENCY) OF DIVISION BB OF THE CONSOLIDATED APPROPRIATIONS ACT, 2021 (P.L. 116-260) 12 (2024).
[10] Chris Hamby, *Senators See Possible Conflicts of Interest in Health Care Pricing Tools*, N. Y. TIMES (May 28, 2024), https://www.nytimes.com/2024/05/28/us/senate-multiplan-health-care-pricing.html.

2) What, if any, difficulties, barriers, or obstacles has EBSA experienced in its enforcement of the CAA's 408(b)(2) disclosure requirements?
3) Under what circumstances does EBSA believe service providers have a fiduciary responsibility under ERISA? Will the Department consider issuing additional guidance to stakeholders clarifying this issue?
4) In a June 2024 Report to Congress on the implementation of the *No Surprises Act* and the CAA, DOL noted the establishment of a Section 408(b)(2) Welfare Plan Disclosure Working Group (Working Group) to investigate service providers that may be running afoul of the law.
    a. Can you describe the composition of the Working Group (i.e., number of EBSA staff and resources available to them), as well as their current and future activities to enforce the CAA's disclosure requirements?
    b. Does EBSA intend to prioritize additional resources for the Working Group's activities in the future?
    c. Will the Working Group continue to operate following expiration of the *No Surprises Act* Implementation Fund?
5) When does the Department intend to move forward with regulations to clarify the application of fee disclosure requirements to health and welfare plans?
6) Are there legislative and resource limitations on EBSA that Congress can address to support its enforcement efforts on service provider transparency?

Please send all official correspondence and information related to these requests to the Committee's Democratic Staff Assistant, Ni'Aisha Banks at Niaisha.Banks@mail.house.gov. If you have any questions or you wish to discuss this matter further, please contact Daniel Foster (Minority Staff) at Daniel.Foster@mail.house.gov.

Thank you in advance for your responses. We look forward to working with you on this issue to improve service provider transparency and lower health care costs for workers and their families.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member

MARK DeSAULNIER
Ranking Member
Subcommittee on Health, Education, Labor, and, Pensions