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Employee Benefit Plan Review

Chevron No More: The Impact on Benefit Plans

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Toward the end of its last term, in *Loper Bright Enterprises v. Raimondo, Secretary of Commerce* and *Relentless, Inc. v. Department of Commerce* (*Loper Bright*), the U.S. Supreme Court overturned *Chevron U.S.A. Inc v. Natural Resources Defense Council, Inc.* (*Chevron*).

In this landmark case, *Loper Bright* overruled the forty-year doctrine known as "*Chevron* deference," whereby courts defer to an administrative agency's reasonable interpretation of ambiguous federal laws, even if the court disagrees with the agency's interpretation.

Instead, *Loper Bright* held that courts must exercise independent judgment in deciding whether an administrative agency has acted within its statutory authority, and may not automatically defer to an agency's legal interpretation when a statute is ambiguous.

It is unclear exactly how broadly *Loper Bright* will be interpreted by future courts and what its effect will be on regulations that were previously upheld under *Chevron*. However, whereas under *Chevron*, agency rules and regulations could generally only be challenged in the courts on the grounds that they were unreasonable, now, even if the interpretation is reasonable, they can be challenged by asking a court whether the agency's interpretation is the correct one, and the court will make that call.

As a result, in the wake of *Loper Bright*, we anticipate there will be an influx in the number of challenges to agency rules and regulations – particularly in situations where litigants find the rules and regulations unfavorable or onerous. This article highlights some benefits-related guidance that is viewed as controversial by those impacted by the guidance and some of the current and/or possible future challenges to these rules.

ACA Section 1557 Final Regulations On Gender Identity

Section 1557 of the ACA prohibits discrimination on the basis of race, color, national origin, sex, age, and disability in health programs and activities receiving federal funding from the Department of Health and Human Services (HHS). It was the first federal civil rights law to prohibit discrimination in health care based on sex. Under both the Obama and Trump administrations, HHS issued rules interpreting Section 1557 – with the interpretations varying based on which political party was in office – and these rules have been the subject of several legal challenges. In the latest enforcement action, on May 6, 2024, HHS published final regulations[1] implementing Section 1557 (the Final Rule).

The Final Rule requires plans and plan sponsors that receive funding from HHS (Covered Entities) to include gender identity in consideration of what constitutes unlawful discrimination, and prohibits Covered Entities from excluding gender-affirming care from coverage.

Following the issuance of the Final Rule, several states filed lawsuits against HHS, and currently, there are twenty-six statewide injunctions that prevent implementation of the Final Rule's gender identity provisions. Notably, the order issued by the U.S. District Court for the Southern District of Mississippi prohibits HHS from enforcing the gender identity provisions of the Final Rule nationwide.

2024 DOL Investment Advice Final Rules

On April 23, 2024, the Department of Labor issued final rules (Investment Advice Final Rules)[2] that significantly expanded the definition of an investment advice fiduciary, altering the landscape for individuals and entities providing investment advice and education to ERISA plan participants. This prompted concern in the investment industry, as well as among the public and individuals in Congress, that the Investment Advice Final Rules would threaten access to financial tools and education needed by plan participants and their families. In May 2024, two lawsuits were filed in Texas district courts relating to the Investment Advice Final Rules, with plaintiffs alleging that the Department of Labor exceeded its rulemaking authority under ERISA, the Internal Revenue Code and the Administrative Procedure Act. Both district courts issued nationwide stays on the Investment Advice Final Rules.

Regulations Under the Mental Health Parity and Addiction Equity Act

The Mental Health Parity Act of 1996 and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) prevent large group health plans from imposing annual or lifetime dollar limits on mental health or substance use disorder benefits that are less favorable than any such limits imposed on medical/surgical benefits. A final regulation implementing MHPAEA was issued in 2013. A comprehensive proposed rule amending those regulations was issued in August 2023, and following a notice and comment period, on July 1, 2024, final regulations under the MHPAEA were submitted for review by the Department of Labor to the Congressional Budget Office. These new regulations (the 2024 regulations) are expected to be finalized and published in the coming months. The 2024 regulations are expected to increase requirements for insurance providers to provide access to mental health and substance abuse care or treatment. Assuming the 2024 regulations do not vary significantly from the 2023 proposed regulations, the final regulations will amend and expand the technical requirements of the MHPAEA and establish new guidelines on non-quantitative treatment limitations.

If and when the 2024 regulations are issued, insurance providers and sponsors of self-funded health plans may challenge the rule given the complexities of compliance, and the increased cost these entities will bear in complying with the rules.

Notes

1. https://www.federalregister.gov/documents/2024/05/06/2024-08711/nondiscrimination-in-health-programs-and-activities.
2. https://www.federalregister.gov/documents/2024/04/25/2024-08065/retirement-security-rule-definition-of-an-investment-advice-fiduciary.

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