

# UnitedHealth Group Insurance TPA, UMR Sued by DOL

The Department of Labor's complaint may indicate health care regulations are going the way of rules for retirement plans.

Reported by [NOAH ZUSS](#)

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Insurance company UMR Inc. was sued Monday by the Department of Labor for allegedly breaching plan documents under the Employee Retirement Income Security Act by denying certain emergency room claims based solely on diagnosis codes and not the standard established by the Patient Protection and Affordable Care Act.

The DOL, in the name of Acting Secretary Julie Su, sued the third-party benefits administrator on two counts of ERISA fiduciary breach. The claims are in connection with UMR denying emergency services claims and urinary drug screening claims for thousands of health plan participants, according to the complaint.

"Specifically, UMR violated ERISA, including ERISA's prudence provisions and requirement to follow plan documents under ERISA § 404, 29 U.S.C. § 1104, by denying ER claims based solely on diagnosis codes and not applying a prudent layperson standard," the DOL alleges. "UMR's explanation of benefits for denied emergency services claims [also] failed to comply with the requirements of the ACA [Affordable Care Act] and the U.S. Department of Labor's claims procedures regulation."

The lawsuit is *Julie A. Su v. UMR, Inc.* The complaint was filed in U.S. District Court for the Western District of Wisconsin.

UMR is a third-party administrator providing services to self-funded employee welfare benefit plans, that provide medical, surgical, or hospital care or benefits to participating employees, the complaint explains. UMR is headquartered in Wausau, Wisconsin.

UMR provided services to at least 2,136 ERISA-covered health plans, the complaint says. United Health Group Inc. is the parent company for UMR, notes the complaint. According to UnitedHealth, UMR is the nation's largest TPA, the complaint states.

## The Lawsuit

The DOL claimed UMR's procedures failed to comply with standards set under The Patient Protection and Affordable Care Act, which is incorporated in ERISA and the terms of the ERISA plans UMR administers, DOL says.

A UMR representative, responding to a request for comment on the lawsuit by email, explains that the complaint deals with administrative processes that are no longer in place.

"We have been in ongoing conversations with the DOL regarding this matter and will continue to defend our position vigorously," says the UMR spokesperson.

## Early ERISA Indications

The [DOL's complaint may indicate](#) that the regulator is elevating its' enforcement actions against providers in the private health care industry, using ERISA lawsuits to bolster heightened fiduciary standards and increased transparency.

"We can expect increased enforcement actions by the Department of Labor with regard to welfare plans—health plans in particular," says Douglas Neville, St-Louis-based ERISA attorney, officer and practice group leader at Greensfelder, Hemker & Gale, P.C Neville. "Although ACA was passed more than a decade ago, it added a staggering volume of new rules for health plans. The DOL is one of the agencies tasked with enforcement of those rules, so it is not surprising that we are seeing more DOL actions regarding health plans."

In the [course of DOL's general investigatory initiatives](#), the regulator has sued self-funded medical and other health and welfare benefits providers that are unrelated to retirement.

"There was some lag between ACA's passage and the uptick in DOL enforcement activity—in part because it took years for regulatory guidance under ACA to be issued," adds Neville. "But there has been an increase in DOL scrutiny of health plans and fiduciary practices in connection with those plans in recent years. I expect that trend will continue for some time."

In 2020, Congress passed the Consolidated Appropriations Act, furthering the DOL's ability to regulate health care providers.

The transparency rules stemming from what is commonly called CAA '21 imposed several new obligations on plan fiduciaries, similar to the rules that have governed retirement plan fiduciaries, explains Drew Oringer, partner in and general counsel at the Wagner Law Group, which is not involved in the litigation.

"Congress also has indicated interest in purported abuses, in passing new disclosure rules in the CAA to track certain indirect compensation under covered group health plans," Oringer adds. "It will be interesting see whether the DOL's efforts in this regard reflect a basic change in investigative priority, or whether these examples represent individual alleged abuses to which the DOL was made aware."

DOL's enforcement efforts for health plans [go back to the 2016 fiduciary rule](#), adds Oringer.

"The DOL, when amending the fiduciary rule [in 2016], was clear as to its concern about retail investment practices, and even though the amended fiduciary rule was vacated, that concern does not appear to have waned," he says. "If the DOL is or were to become similarly concerned about health-plan practices, it is not impossible that we could see the kind of concerted activity that we're used to seeing in the [defined contribution] arena."

## Is it a Trend?

The DOL [reached a settlement](#) with Prudential Insurance Company of America, earlier this year, Oringer notes.

Whether the Prudential settlement and UMR lawsuit indicate the DOL is pursuing health care plans, "It may be too early to say that 'two' is a trend," Oringer notes.

"It is difficult to tell from the [UMR] case whether these claims have resulted from a general DOL initiative regarding investigations of insurers' practices, or whether this particular allegedly abusive situation specifically came to the DOL's attention," explains Oringer.

The DOL [posted FAQs on implementing certain provisions](#) of the Affordable Care Act and CAA '21 earlier this year.

In this litigation, the DOL is asking the court to require UMR to reform its procedures for ER claims and UDS claims to comply with ERISA; readjudicate all such claims that were denied or partially denied from January 1, 2015, to present, and require UMR from future violations of ERISA; and granting such other relief as may be appropriate.

Requests for comment to the DOL were not returned.

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**Tags**

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