

# DOL Sues Blue Cross Blue Shield Minnesota for Collecting \$66.8M in Provider Tax

The Department of Labor filed a lawsuit against Blue Cross Blue Shield of Minnesota, claiming the third-party administrator became a fiduciary of the health plans by exercising control over plan assets.

Reported by [NOAH ZUSS](#)

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The Department of Labor filed a complaint against Blue Cross Blue Shield of Minnesota on January 16 in U.S. District Court for the District of Minnesota for alleged improper collection of at least \$66.8 million from the self-funded health benefit plans it administers.

The lawsuit points to the regulator's [continued enforcement push on private health-care providers](#) and the DOL's strategy of bringing suit under the Employee Retirement Income Security Act as a means to improve the providers' fiduciary standards and transparency.

Between 2016 and 2020, Blue Cross Blue Shield of Minnesota caused the self-funded health benefit plans it serves as third-party administrator to compensate its own in-network providers for amounts they owed under a Minnesota provider tax—expenses the providers never billed or passed on to the plans—without authority to do so, the DOL alleges.

From January 1, 2015, through December 31, 2022, BCBSM entered into administrative service agreements with employers in Minnesota to establish the plans. The company also supplied each employer with a summary plan description, which functioned as the plan's governing document, and benefit booklets that described the terms of the plan and governed its administration and management, according to the complaint.

"Without authority to do so under the [plan governing documents], and without obtaining approval from independent fiduciaries of the Plans, BCBSM caused the Plans to reimburse BCBSM the amounts it paid to the providers for the providers' MNCare Tax obligations, and in so doing exercised authority over the assets of the Plans and discretionary authority over the management or administration of the Plans," the DOL wrote.

For sponsors of health benefits, the [BCBSM lawsuit may be significant](#), if the facts regarding the taxes at issue were not fully disclosed to the plan sponsors and/or plan fiduciaries, says Douglas Neville, officer and practice group leader at St. Louis, Missouri-based law firm Greensfelder, Hemker & Gale PC, which is not involved in the litigation.

"This action illustrates the DOL's continued proactive—and sometimes aggressive—stance in identifying and pursuing any perceived fiduciary violations," Neville says.

BCBSM is regulated under Minnesota law as a corporation authorized to provide administrative services to their organizations that offer health benefits, the complaint notes. BCBSM contracts with Minnesota health-care providers that agree to enter its network, per the agreements. The providers agree to accept negotiated rates as payment for their services.

## The Complaint

The DOL, in the name of Acting Secretary of Labor Julie Su, sued BCBSM on two causes of action: prohibited transactions and breaches of fiduciary duties under ERISA.

In its complaint, the DOL claims that, by charging the client-plans for taxes they did not actually incur, BCBSM became a fiduciary of the plans by exercising control over plan assets, Neville says.

“Although there is a basis in ERISA for this allegation, I anticipate that there could be disagreement over whether BCBSM in fact acted in a fiduciary capacity,” Neville says. “In addition, the DOL alleged that BCBSM engaged in prohibited transactions and breached its—alleged—fiduciary duty.”

Since 1994, Minnesota has imposed a tax on the gross revenue of hospitals, surgical centers and health-care providers derived from payments made for patient services.

### **ERISA Indications**

The DOL [sued insurance company UMR Inc.](#) and the [health plan of a New Jersey electrical contractor](#) last year. In the former, the DOL claimed UMR’s procedures failed to comply with standards set under the Patient Protection and Affordable Care Act, which was incorporated into ERISA, and the terms of the ERISA plans that UMR administers.

[ERISA Section 404\(a\)\(1\)](#) imposes on plan fiduciaries a duty to act prudently and solely in the interests of participants and beneficiaries when managing and administering employee benefit plans and the assets of those plans.

The lawsuit against BCBSM could have implications for plan sponsors, Neville adds.

“If the action is successful—if it results in a consent judgment in which BCBSM agrees to settle the matter—this could impact the industry by increasing transparency in what fees, taxes and expenses TPAs are passing through to plans—and the basis for doing so,” he says.

### **Trending Lessons for Plan Sponsors**

Sponsors of health benefit plans [need to be prepared](#) to be taken to court, as there will likely be a new wave of suits related to health plan expenditures and fees, wrote former DOL solicitor and employee benefits attorney Joanne Roskey, a member of law firm Miller & Chevalier Chartered, in September 2023.

The BCBSM lawsuit “highlights the need for any party dealing with ERISA plans to ensure that its actions are carefully considered, planned and executed in accordance with ERISA fiduciary standards,” Neville says.

Drew Oringer, a partner in and general counsel at the Wagner Law Group, which is not involved in the litigation, says careful consideration must extend to plan documents.

“One thing that’s becoming increasingly clear: [You need to] look at the controlling documents,” Oringer says. “Don’t make the mistake of thinking that long, dense provisions are meaningless boilerplate. When you want to make a payment, take a reimbursement or otherwise move money around, make sure the plan documents and the various contracts and other rules permit what you want to do, or at least don’t prohibit it.”

BCBSM, headquartered in Egan, Minnesota, provides TPA services to self-funded employee welfare benefit plans established or maintained by employers located in Minnesota. BCBSM is part of the American federation of 33 independent and locally operated Blue Cross Blue Shield Association companies that provide health insurance in the U.S. to an estimated 115 million people.

In response to PLANSPONSOR inquiry, a BCBSM representative supplied the following statement: “While we cannot comment on specifics of active litigation, Blue Cross and Blue Shield of Minnesota strongly believes the underlying claims in the Department of Labor lawsuit are without merit and based on unsupported interpretations of the MinnesotaCare Provider Tax law. Our negotiated payment rates incorporate all applicable taxes and fees and reflect our commitment to ensuring every member has access to affordable, high-quality care. We look forward to actively defending our position throughout the legal process.”

The DOL did not comment on the suit.

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### **Tags**

[Affordable Care Act](#), [Department of Labor](#), [Employee Retirement Income Security Act](#), [fiduciary breach](#), [fiduciary duty](#), [Health Insurance](#), [institutional investors](#), [Julie Su](#), [prohibited transactions](#), [retirement plan](#)

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Noah Zuss