DOL Employee Benefit Plan Audits & How to Prepare

June 26, 2014

Assurex GLOBAL

DOL Employee Benefit Plan Audits & How to Prepare

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel.

DOL Employee Benefit Plan Audits & How to Prepare

June 26, 2014

Assurex Global Shareholders:

- Ahmann-Martin
- Catto & Catto
- The Crichton Group
- Engle-Hambright & Davies
- Frenkel Benefits
- Gillis, Ellis & Baker, Inc.
- The Horton Group
- INSURICA
- Kapnick Insurance Group
- Kinney Pike Insurance
- Lipscomb & Pitts Insurance
- LMC Insurance & Risk Management
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- R&R/The Knowledge Brokers
- RCM&D
- Roach Howard Smith & Barton
- The Rowley Agency
- Smith Brothers Insurance
- Starkweather & Shepley Insurance Brokerage
- Woodruff-Sawyer & Co.
- Wortham Insurance & Risk Management

Assurex GLOBAL

U.S. Department of Labor

Employee Benefits Security Administration
Seattle District Office
300 Fifth Avenue, Suite 1110
Seattle, WA 98104

Reply to the attention of: 71-010600
[redacted] Investigator
[redacted]

January 31, 2014

[redacted]

RE: [redacted] **Inc. Benefit Plan**

[redacted]

The Department of Labor has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as the North West Handling Systems, Inc. Benefit Plan (the Plan).

The Plan is scheduled for investigation by this office. Investigative authority is vested in the Secretary of Labor by Section 504 of ERISA, 29 U.S.C. 1134, which states in part:

> The Secretary [of Labor] shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder...to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title....

Additionally, the Plan will be examined for the purpose of determining whether it is complying with the laws contained in Part 7 of ERISA, including the Health Insurance Portability and Accountability Act of 1996, the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act (WHCRA), the Mental Health Parity and Addiction Equity Act, the Genetic Information Nondiscrimination Act, and the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act (together, the Affordable Care Act). These laws amended Part 7 of ERISA and provide requirements for group health plans.

We have found in the past that submission of relevant documents to our office prior to the inception of an on-site field investigation can lessen the time subsequently spent with, and the administrative burden placed on, plan and corporate officials and may eliminate the need for an on-site visit entirely. To that end, we ask that you submit to this office, ***within fifteen business days*** of your receipt of this letter, the documentation listed on the enclosed Attachment A. If any

Employee Benefit Plan Compliance

- Employee Benefit Compliance Landscape
  - Various government agencies involved in regulation of different aspects of employee benefit plans
  - Treasury/IRS
    - Tax treatment of employee benefits
    - Various ACA issues
      - Employer 4980H shared responsibility rules
  - Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS)
    - Public Health Services Act (PHSA)
      - ACA Insurance Market Reforms
      - Other ACA requirements applicable to plans not subject to ERISA
    - HIPAA Privacy and Security

Employee Benefit Plan Compliance

- Employee Benefit Compliance Landscape
  - State Insurance Laws and Regulations
    - States still have authority to regulate insurance
    - Group health insurance is generally subject to the laws of the state where the group plan is issued – not where the employer is located or where the employee lives
    - Due to the ERISA preemption clause states may not regulate the terms of the employer's plan
  - Department of Labor (DOL) - Employee Benefits Security Administration (EBSA)
    - ERISA

ERISA

- Employers Subject to ERISA
  - ERISA Section 4(a) states that the provisions of ERISA Title I apply to any employee welfare benefit plan if it is established or maintained:
    - by an employer engaged in commerce or in any industry or activity affecting commerce;
    - by any employee organization(s) representing employees engaged in commerce or in any industry or activity affecting commerce; or
  - Exemptions
    - Indian Tribal Governments
    - Church Plans
    - Governmental Entities (Cities, Counties, Public Schools, etc.)
      - Subject to Public Health Service Act (PHSA)

DOL ERISA Enforcement

- DOL's Investigation Powers
  - The DOL's investigative authority comes from ERISA §504,
    - Provides the agency with power to investigate whether "any person has violated or is about to violate any provision of ERISA Title I or any regulation or order issued under Title I."
  - The DOL may commence an investigation and require records whether or not it has reasonable cause to believe any particular violation exists.
- How EBSA Determines Whom to Investigate
  - Participant complaints
  - 5500 targeting
  - Specific national office initiatives
  - News stories and press tips

DOL ERISA Enforcement

- DOL's Investigation Powers (continued)
  - ERISA §504(a)(1) permits the DOL to investigate whether any person has violated or will violate ERISA.
  - ERISA §504 states that the DOL may make available to any person actually affected by any matter which is the subject of an investigation (and to any department or agency of the United States), information concerning any matter which may be the subject of an investigation.
  - In addition to its power to obtain documents in connection with an investigation, the DOL has the broad general authority to request production of documents "relating to" an ERISA plan.

DOL ERISA Enforcement

- What is the Likelihood of a Civil Investigation?
  - EBSA's oversight authority extends to over 708,000 retirement plans, 2.8 million health plans, and a similar number of other welfare benefit plans (such as life or disability insurance)
  - In 2013, EBSA closed 3,677 civil investigations, with 2,677 resulting in monetary results for plans or other corrective action

Civil Investigations				
Civil Investigations Closed	Civil Investigations Closed with Results	Percent Civil Investigations Closed with Results	Civil Investigations Referred for Litigation	Civil Cases with Litigation Filed
3,677	2,677	72.8%	190	111

DOL ERISA Enforcement

- Civil Penalty Assessments
  - The DOL has authority to assess penalties for numerous ERISA violations. Common penalty assessments:
    - Failure to file Form 5500s (including failure to file complete Form 5500s)
    - Failure to timely respond to requests for information
    - Prohibited transactions
    - Other breaches of fiduciary duty

DOL ERISA Enforcement

- Criminal Investigations
  - 2013 – 320 criminal cases closed
    - 70 resulted in guilty plea or conviction
  - A criminal investigation may result from an initial civil investigation
    - Any later prosecution of these criminal violations is handled by the U.S. Attorney's Office

Criminal Investigations		
Criminal Investigations Closed	Criminal Investigations Closed with Guilty Pleas or Convictions	Number of Individuals Indicted
320	70	88

DOL ERISA Enforcement

- What is the Process of a DOL Audit?
  - Initial Contact and Reply
    - Document Request Letter
    - Confirm Scope and Request
  - Document Production
    - Pre-Screen Materials Furnished
  - Physical Facilities
    - On-Site Interviews
  - Preparation for Settlement and Closeout
  - Results
    - Closing Letter
    - Settlement Agreement

ATTACHMENT A

Copies of items identified below should be submitted as indicated in the cover letter.

1. Plan document.
2. Summary Plan Description (SPD), including any changes in Plan benefits and entitlement to benefits.
3. Signed Forms 5500 Annual Return or Report of Employee Benefit Plan for Plan years 2011 and 2012.
4. Summary of Benefits and Coverage (SBC), Notices of Material Modifications, and Uniform Glossary.
5. All agreements/contracts between the Plan and service providers including, but not limited to, third party administrators, insurance companies, stop loss carriers, brokers, consultants, actuaries, and preferred provider organizations in effect during the period January 1, 2012 to present.
6. Sample copy of employee enrollment packets, as provided to employees upon being hired or becoming eligible for benefits in the and prior to open enrollment.
7. Documents which describe the responsibilities of both the employer and employees with respect to the payment of the costs associated with the purchase and maintenance of health and welfare benefits.
8. In accordance with the Health Insurance Portability and Accountability Act of 1996, please provide the following records:
   a. A copy of the Plan's rules for eligibility to enroll under the terms of the Plan (including continued eligibility).
   b. A sample of the certification provided to those employees who have lost health care coverage since January 1, 2013 or to be provided to those who may lose health care coverage under this plan in the future, which certifies creditable coverage earned under this plan;
   c. A copy of the record or log of all Certificates of Creditable Coverage for individuals who lost coverage under the Plan or requested certificates;
   d. A copy of the written procedure for individuals to request and receive certificates;
   e. A sample general notice of preexisting condition informing individuals of the exclusion period, the terms of the exclusion period, and the right of individuals to demonstrate creditable coverage (and any applicable waiting or affiliation periods) to reduce the preexisting condition exclusion period, or

proof that the plan does not impose a preexisting condition exclusion;

f. Copies of individual notices of preexisting condition exclusion issued to certain individuals per the regulations (including any lists or logs an administrator may keep of issued notices), or proof that the Plan does not impose a preexisting condition exclusion;

g. A copy of the necessary criteria for an individual without a certificate of creditable coverage to demonstrate creditable coverage by alternative means;

h. Records of claims denied due to the imposition of the preexisting condition exclusion (as well as the Plan's determination and reconsideration of creditable coverage, if applicable), or proof that the Plan does not impose a preexisting condition exclusion;

i. A copy of the written procedures that provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption, including any lists or logs an administrator may keep of issued notices; and

j. A copy of the written appeal procedures established by the Plan.

9. A copy of the Plan's rules regarding coverage of medical/surgical and mental health benefits, including information as to any aggregate lifetime dollar limits and annual dollar limits.

10. The Plan's Newborns' Act notice (this should appear in the plan's SPD), including lists or logs of notices an administrator may keep of issued notices.

11. A copy of the Plan's rules regarding pre-authorization for a hospital length of stay in connection with childbirth.

12. A sample of the written description of benefits mandated by WHCRA required to be provided to participants and beneficiaries upon enrollment.

13. A sample of the written description of benefits mandated by WHCRA required to be provided to participants and beneficiaries annually.

14. Materials describing any wellness programs or disease management programs offered by the plan. If the program offers a reward based on an individual's ability to meet a standard related to a health factor, the plan should also include its wellness program disclosure statement regarding the availability of a reasonable alternative.

15. If the Plan **is claiming or has claimed grandfathered health plan status** within the meaning of section 1251 of the Affordable Care Act, please provide the following records:

    a. A copy of the grandfathered health plan status disclosure statement that was required to be included in plan materials provided to participants and beneficiaries describing the benefits provided under the Plan.

    b. Records documenting the terms of the Plan in effect on March 23, 2010 and any other documents necessary to verify, explain or clarify status as a grandfathered health plan. This may include documentation relating to the terms of cost sharing (fixed and percentage), the contribution rate of the employer or employee organization towards the cost of any tier of coverage, annual and lifetime limits on benefits, and if applicable, any contract with a health insurance issuer, which were in effect on March 23, 2010.

16. Regardless of whether the Plan is claiming grandfathered status, please provide the following records in accordance with section 715 of ERISA as added by the Affordable Care Act:

    a. In the case of a plan that provides dependent coverage, please provide a sample of the written notice describing enrollment opportunities relating to dependent coverage of children to age 26.

    b. If the Plan has rescinded any participant's or beneficiary's coverage, supply a list of participants or beneficiaries whose coverage has been rescinded, the reason for the rescission, and a copy of the written notice of rescission that was provided 30 days in advance of any rescission of coverage.

    c. If the Plan imposes a lifetime limit or has imposed a lifetime limit at any point since September 23, 2010, please provide documents showing the limits applicable for each plan year on or after September 23, 2010.

       Please provide a sample of any notice sent to participants or beneficiaries stating that the lifetime limit on the dollar value of all benefits no longer applies and that the individual, if covered, is once again eligible for benefits under the plan.

    d. If the Plan imposes an annual limit or has imposed an annual limit at any point since September 23, 2010, please provide documents showing the limits applicable for each plan year on or after September 23, 2010.

17. If the Plan is **NOT claiming** grandfathered health plan status under section 1251 of the Affordable Care Act, please also provide the following records:

    a. A copy of the choice of provider notice informing participants of the right to designate any participating primary care provider, physician specializing in pediatrics in the case of a child, or health care professional specializing in obstetric or gynecology in the case of women, and a list of participants who received the disclosure notice.

    b. If the Plan provides any benefits with respect to emergency services in an emergency department of a hospital, please provide copies of documents relating to such emergency services for each plan year on or after September 23, 2010.

    c. Copies of documents relating to the provision of preventive services for each plan year on or after September 23, 2010.

    d. Copy of the Plan's Internal Claim and Appeals and External Review Processes.

    e. Copies of a notice of adverse benefit determination, notice of final internal adverse determination notice, and notice of final external review decision.

    f. If applicable, any contract or agreement with any independent review organization or third party administrator providing external review.

18. All check registers for the payment of medical claims for the period January 1, 2013 – December 31, 2013.

19. List of claims submitted to the Plan's stop loss or reinsurance provider during the period January 1, 2013 – January 31, 2014.

20. Copies of denied claims during the period July 1, 2013 – December 31, 2013. Claim denials should include date of service, amount of the claim, reason for denial, and any information provided to the Plan participant regarding their right to appeal denied claims.

21. Listing of all claims that were appealed during the period January 1, 2013 – December 31, 2013. List should include information as status of the appeal (pending, denied, or claim paid).

22. All claims experience reports created during the period January 1, 2012 – December 31, 2013.

23. Most recent claims audit report or other report evaluating the proficiency and accuracy of plan benefit claim processing.

24. Most recent report indicating the amount of Incurred But Not Paid (IBNR) claims.

25. Most recent claims aging report.

26. Most recent report of all pending and unpaid medical claims (claims received but not yet paid).

27. All minutes of meetings relating to the Plan during the period January 1, 2012 to the present.

28. All corporate resolutions relating to the Plan effective during the period January 1, 2012 to the present.

29. All documents sufficient to show the disposition of any rebates, refunds, or surplus funds received in connection with the Plan's agreements/contracts with service providers that were received during the period January 1, 2012 to the present.

DOL ERISA Enforcement

- Advice from a Former DOL Auditor on How to Get Through the Investigation Smoothly
  - Conduct regular compliance audits of your plans
  - Produce all documents in an organized and timely manner
  - Be courteous and professional
  - Designate 1 or 2 senior employees or an attorney who will be responsible for all contact and communication between the employer and investigator
  - Give the investigator a space to work that is private during the on-site visit
  - Have legal counsel prepare employees or fiduciaries before the interview
  - Be patient-investigations take between 6-18 months

DOL Employee Benefit Plan Audits & How to Prepare

June 26, 2014

Assurex Global Shareholders:

- Ahmann-Martin
- Catto & Catto
- The Crichton Group
- Engle-Hambright & Davies
- Frenkel Benefits
- Gillis, Ellis & Baker, Inc.
- The Horton Group
- INSURICA
- Kapnick Insurance Group
- Kinney Pike Insurance
- Lipscomb & Pitts Insurance
- LMC Insurance & Risk Management
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- R&R/The Knowledge Brokers
- RCM&D
- Roach Howard Smith & Barton
- The Rowley Agency
- Smith Brothers Insurance
- Starkweather & Shepley Insurance Brokerage
- Woodruff-Sawyer & Co.
- Wortham Insurance & Risk Management

Thank you!

Assurex GLOBAL

DOL Employee Benefit Plan Audits & How to Prepare

June 26, 2014

Assurex GLOBAL