

**U. S. Department of Labor,  
Pension & Welfare Benefits Administration  
(now Employee Benefits Security Administration)**

## **Information Letter**

February 19, 1998

Diana Orantes Ceresi  
Associate General Counsel  
SEIU, AFL-CIO, CLC  
1313 L Street, N.W.  
Washington, DC 20005

Dear Ms. Ceresi:

This is in response to your letter on behalf of the Service Employees' International Union (SEIU) requesting guidance concerning the application of the fiduciary provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether it is appropriate for a trustee of an ERISA-covered health and welfare fund to consider quality in the selection of health care services.

You represent that you have been asked on several occasions by various of your members who serve as trustees of Taft-Hartley health and welfare funds sponsored by SEIU locals throughout the country whether they can give quality of health care services priority over cost when contracting with or making a choice from among various providers or plans. You seek assurance that ERISA does not require fiduciaries to contract with the health care provider or plan that submits the lowest fee quote.

When the selection of a health care provider involves the disposition of employee benefit plan assets, such selection is an exercise of authority or control with respect to the management and disposition of the plan's assets within the meaning of section 3(21)(A) of ERISA, and thus constitutes a fiduciary act subject to the general fiduciary responsibility standards and prohibited transaction provisions of ERISA. Section 404(a)(1) of ERISA requires, among other things, that a fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims.

The prohibited transaction provisions state in sections 406(a)(1)(C) and (D) of ERISA, that a fiduciary with respect to an employee benefit plan shall not cause the plan to engage in a transaction if he or she knows or should know that such transaction constitutes a direct or indirect furnishing of services between the plan and a party in interest with respect to the plan, or transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Section 408(b)(2) of ERISA provides a statutory exemption from the prohibitions of section 406(a) for contracting or making reasonable arrangements with a party in interest, including a fiduciary, for

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office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

In selecting a health care provider in this context, as with the selection of any service provider under ERISA, the responsible plan fiduciary must engage in an objective process designed to elicit information necessary to assess the qualifications of the provider, the quality of services offered, and the reasonableness of the fees charged in light of the services provided. In addition, such process should be designed to avoid self-dealing, conflicts of interest or other improper influence. What constitutes an appropriate method of selecting a health care provider, however, will depend upon the particular facts and circumstances. Soliciting bids among service providers at the outset is a means by which the fiduciary can obtain the necessary information relevant to the decision-making process. Whether such a process is appropriate in subsequent years may depend, among other things, upon the fiduciary's knowledge of the service provider's work, the cost and quality of the services previously provided by the service provider, the fiduciary's knowledge of prevailing rates for similar services, as well as the cost to the plan of conducting a particular selection process. Regardless of the method used, however, the fiduciary must be able to demonstrate compliance with ERISA's fiduciary standards.

With regard to the foregoing, it should be noted that, because numerous factors necessarily will be considered by a fiduciary when selecting health care service providers, the fiduciary need not select the lowest bidder when soliciting bids, although the fiduciary must ensure that the compensation paid to a service provider is reasonable in light of the services provided to the plan. It also should be noted that, because "quality of services" is a factor relevant to selection of a service provider, it is the view of the Department that a plan fiduciary's failure to take quality of services into account in the selection process would constitute a breach of the fiduciary's duty under ERISA when, in the case of a Taft-Hartley or other plan, the selection involves the disposition of plan assets.

In assessing "quality of services," the Department believes that a plan fiduciary may, among other things, consider the scope of choices and qualifications of medical providers and specialists available to participants, ease of access to medical providers, ease of access to information concerning the operations of the health care provider, the extent to which internal procedures provide for timely consideration and resolution of patient questions and complaints, the extent to which internal procedures provide for the confidentiality of patient records, enrollee satisfaction statistics, and rating or accreditation of health care service providers by independent services or state agencies.

We hope this information will be helpful to you.

Sincerely,  
Bette J. Briggs  
Chief, Division of Fiduciary Interpretations  
Office of Regulations and Interpretations