



Fiduciary obligations under ERISA

ERISA imposes a fiduciary duty on plan administrators (TPA's) to act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan.

Reference-based pricing: an overview

Reference-based pricing is an innovative health care pricing model that establishes a “reference price” for medical services and procedures based on the average cost of those services in a specific region. By capping the reimbursement rate for health care providers, RBP can significantly reduce health care costs for both employers and employees while maintaining quality care and expanding provider choice.

The most common reference used in RBP is a multiple of Medicare reimbursement rates; for example, the plan pays 120% to 150% of Medicare. **This makes it incredibly difficult for providers to deny payments as the federal government, through Medicare and Medicaid, is often a provider’s largest client.**

Medicare rates are considered a reliable benchmark because they are based on the cost of providing medical services and procedures across different geographic regions in the United States. By using Medicare rates plus a markup as a reference point, RBP aims to establish a transparent and abundantly fair pricing structure for health care services.

Furthermore, **RBP has gained the explicit endorsement of the federal government, confirming its legality and viability as a cost-containment strategy.**

The fiduciary imperative to evaluate RBP

Given the significant cost savings and expanded provider choice associated with RBP, it is increasingly difficult to argue that a plan fiduciary can discharge their duties under ERISA without at least evaluating the potential benefits of RBP for their health insurance plans. **This is particularly true considering the federal government’s endorsement of RBP and its growing adoption by employers nationwide.**



The impact of federal government endorsement and legal precedents

The federal government’s endorsement of RBP solidifies its position as a legally viable and effective health care pricing model. The endorsement by the federal government serves as a strong signal to fiduciaries that RBP is a legitimate and beneficial option for health insurance plans.

The federal government’s recognition and guidance on RBP can be seen in the regulatory framework and through recent relevant judicial decisions.

1. Patient Protection and Affordable Care Act (PPACA) and RBP: PPACA encourages the adoption of innovative payment models, such as RBP, to promote cost containment and improve the quality of care. PPACA’s focus on transparency, cost control, and value-based care created a favorable environment for the adoption of RBP strategies.

2. Department of Labor (DOL) guidance: The DOL, which is responsible for enforcing ERISA regulations, has provided guidance on RBP through various advisory opinions and FAQs. These documents provide a framework for how RBP can be compliant with ERISA and other applicable regulations.

For example, in its 2016 FAQs About Affordable Care Act Implementation [Part 31](#) (issued jointly with the Department of Health and Human Services and the Department of the Treasury), the DOL clarified that a plan utilizing RBP will not violate the ACA’s prohibition on annual or lifetime dollar limits, as long as the RBP is applied to a set of essential health benefits and the plan pays at least 60% of the total allowed costs for those benefits.

3. Court decisions: have upheld the legality of RBP practices when challenged. **These decisions serve as an indirect acknowledgment that RBP is a lawful and effective cost-containment strategy.**

For instance, in the case of *Montefiore Med. Ctr. v. Local 272 Welfare Fund*, No. 12 Civ. 9250 (S.D.N.Y. 2014), the court held that a self-funded health plan using RBP did not violate ERISA’s fiduciary duty provisions. The court reasoned that the plan’s adoption of RBP was consistent with the plan sponsor’s fiduciary duty to manage the plan in the best interests of its participants.



Industry trends and best practices

Several prominent employers across various industries have adopted reference-based pricing (RBP) as a cost-containment strategy for their health plans. While specific employer names might not be publicly available due to privacy concerns, some well-known organizations have implemented RBP, including:

- 1. The State of Montana:** In 2016, Montana's state employee health plan adopted an RBP model that caps payments to medical providers at a percentage above Medicare rates. The move helped the state control healthcare costs and has been considered a success.
- 2. Purdue University:** In 2018, Purdue University introduced an RBP option for its employees as part of its health care offerings. The university reported significant cost savings and positive feedback from employees participating in the RBP plan.
- 3. Rosen Hotels & Resorts:** Rosen Hotels & Resorts, a Florida-based hotel chain, adopted an RBP model as a part of its self-funded health care plan. The company has experienced substantial cost savings while maintaining high-quality care for its employees.
- 4. The City of Kirkland, Washington:** In 2017, Kirkland implemented an RBP model for its employee health plan. The city saw a reduction in health care expenses and improved transparency in medical pricing.

These examples represent just a small sample of employers that have adopted RBP as a part of their health and welfare plans. As the success of RBP models becomes more evident, and as more employers recognize the benefits of adopting RBP, it is likely that an increasing number of organizations will consider implementing RBP strategies for their healthcare plans.

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