

## DOL Files Suit Against Macy's for Alleged Health and Welfare Plan Violations

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September 20, 2017

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The DOL recently filed suit against Macy's and two of its third party administrators (the **TPAs**) alleging violations of ERISA's fiduciary rules and related offenses with respect to the payment of out-of-network (the **OON**) healthcare claims, as well as against Macy's for alleged violations of HIPAA's wellness rules and ERISA's fiduciary rules. The applicable SPD indicated that the amount payable for services received from OON providers would be based on the lesser of the provider's actual charge or the average charge for similar services by providers in the participant's geographic area, while the TPAs actually determined the reimbursement amounts based on a percentage of the Medicare Allowable Rate. In addition to penalties, the DOL's complaint requests that the court require the plan to reprocess all OON claims during the applicable time period in a manner consistent with the then written terms of the plan. Many employer-sponsored health plans have similar issues regarding how allowable amounts are computed for OON claims, and this lawsuit serves as a good reminder for employers to review their plan and SPD documents. The DOL also alleged that Macy's wellness program failed to administer a tobacco user premium surcharge in accordance with HIPAA's wellness rules during this period. This is one of the first times the DOL has publicly attempted to enforce the HIPAA wellness rules and may signal a change in the DOL's enforcement actions. Employers should review their wellness programs for compliance. We will keep you updated on this case as it moves forward: *Acosta v. Macy's, Inc.*, S.D. Ohio, No. 1:17-cv-00541, complaint filed August 16, 2017, and amended August 29, 2017.