

RECORDINGS OF PHONE CALLS MADE FOR QUALITY ASSURANCE PURPOSES MUST BE DISCLOSED TO ERISA BENEFIT CLAIMANTS

Hodgson Russ Employee Benefits Newsletter
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The U.S. Department of Labor on June 14, 2021 responded to an attorney's request for guidance about whether ERISA's claims regulations require a plan to turn over recorded phone calls and transcripts of conversations between her client and the plan's insurance carrier regarding the denial of a claim for disability benefits.

Viewing the issue as having broad application, the DOL issued an information letter, opining that recorded phone calls made for quality assurance purposes must be provided to benefit claimants upon request for the plan's claims procedures to satisfy ERISA's full and fair review requirements. In particular, the DOL rejected the plan's position that the audio recordings need not be disclosed because the conversations were not recorded to administer benefit claims, but for "quality assurance purposes."

In addition, the DOL rejected the plan's argument that the recordings were not part of the administrative record because the recordings were not relied upon in administering the disability claim. ERISA's regulations provide that a plan does not satisfy the requirement of full and fair review unless the claims procedures provide a claimant may receive upon request copies of "all documents, records, and other information relevant to the claimant's claim for benefits." The DOL emphasized that a document or record is "relevant" if it was "generated" in the course of making the benefit determination, even if it was not "relied upon" in making the claims decision. Finally, the DOL clarified that audio, video and other electronic or digital records are subject to disclosure under ERISA's claims procedure rules.

Plan administrators should work with their carriers or third party administrators to ensure that such recordings are retained for the relevant limitations period, and are disclosed upon request, even if the recordings were not relied upon in denying the claim.

DOL Information Letter 06-14-2021 - <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/information-letters/06-14-2021>

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