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140 West Germantown Pike, Suite 200  
Plymouth Meeting, PA 19462-1421

[www.healthcaregroup.com](http://www.healthcaregroup.com)

1.800.473.0032

## **Don't Ignore Your Retirement Plan Administration**

The topic of Retirement Plan Administration can be quite overbearing when one considers all of the details and deadlines, that need to be observed. Doctors and medical practice managers tend to be well in tune with the "bottom line" aspects of their practice retirement plans - i.e., how much is contributed and how much needs to be paid out. But when it comes to the administration of the plan, their understanding is often not what it should be.

Unfortunately, this is a case where what you don't know could hurt you.

Given the large amount of money wrapped up in retirement plans, the federal government is very interested in how they are run. In fact, the government's primary means of ensuring compliance with retirement plan laws is by examining how plans are operated or administered. Administering a plan involves a complex collection of duties, which includes enrolling employees at the proper time; allocating money for participants; distributing information about the plan; and processing benefit claims. These activities can be very involved and they carry the potential for stiff penalties if handled improperly. Therefore, retirement plan administration is rarely performed by the physician or group practice sponsoring the plan -- it is typically delegated to a professional administration or accounting firm.

This is where a little knowledge is valuable, because while you probably employ an outside professional to administer your plan, you are ultimately responsible that all legal requirements are met -- and you could be penalized if they are not. Therefore, to help you ascertain that your plan is being run properly, this article will review the basics of retirement plan administration.

### IRS Review

In most cases, a practice will choose to have the Internal Revenue Service (IRS) review a retirement plan. If the plan documents meet the tax qualification rules, the IRS will issue a positive "determination letter," and the practice can move ahead with active funding and benefit accruals for the employees. Retirement plans are also routinely resubmitted when significantly amended -- for example, when complying with changes in the retirement plan law.

Before sending a new or rewritten plan to the IRS, you must notify all "interested parties" that you are requesting the review. These are generally all employees and any vested beneficiary. This notice must be delivered to each interested party, or conspicuously posted at each office location, within a specific time-period.

### Plan Descriptions

Plan sponsors must provide each participant with a "summary plan description" (SPD). This is a simplified explanation of the plan and the rights of participants, and other information about the plan, its sponsors, and its fiduciaries. The SPD must be furnished to each participant and beneficiary within 90 days after becoming a participant or first receiving benefits. The SPD must also be distributed to all participants if it is revised to reflect an amendment to the plan.

### Fiduciary Bond

A plan sponsor is generally required to obtain a bond for the "fiduciaries" of the plan. A plan fiduciary is any person or entity who handles its assets. Thus, the bond coverage must be purchased for at least the plan administrator, trustees and sponsoring employer. The minimum required bond coverage amount is the greater of \$1,000 or 10% of the plan assets -- which means that the bond must be increased as the plan's assets grow.

## Tax Identification

It is generally advisable to obtain a separate tax identification number for the trust that holds the plan's assets. Obtaining this number will ensure that ownership of the plan's assets -- and any income from it -- will not be mistakenly assigned to the physician or practice sponsoring the plan. The tax identification number can be had by filing IRS Form SS-4.

## Participation and Contributions

The plan administrator must determine which employees are eligible to participate, by referring to and maintaining a current list of employees' birth and hire dates. Throughout the plan year, the list of eligible and participating employees should be updated regularly.

When contributions are made to the plan each year, the funds must be allocated among the participants. In the case of "defined contribution" plans, specific dollar amounts must be allocated from the overall contribution and credited to each person's plan account. This specific earmarking does not apply for "defined benefit" plans, since contributions are actuarially determined for all participants as a group, and no specific allocations are made for individuals.

## Reporting and Disclosure Requirements

Retirement plan sponsors must file an annual report with the government -- commonly referred to as the Form 5500 series report. This reporting requirement applies to Keogh plans, as well as corporate-sponsored retirement plans. Unless an extension is granted, the appropriate Form 5500 -- there are several versions of it -- is due by the last day of the seventh month following the close of the plan year (July 31 for calendar-year plans).

The penalties for late or incomplete filing of the Form 5500 can be harsh: \$25 for each day it is late, to a maximum of \$15,000; and the plan administrator may receive an administrative penalty of up to \$1,100 a day for filing an incomplete form. In addition, if the form is rejected because of failure to provide material information, it will be treated as if it had not been filed -- leaving the plan administrator subject to penalties for lateness and incompleteness.

The plan administrator must also give each participant a Summary Annual Report (SAR), a simplified version of the Form 5500. The SAR must provide information on the value of the trust assets as of the first and last day of the plan year; the plan expenses incurred during the plan year; and information on any plan assets invested in insurance contracts. The plan administrator must also allow any participant to examine, at any time, the plan's full annual report.

Finally, the administrator must report benefit payments that occur during the year on the appropriate IRS form.

## Rules for Married Participants

Each participant must be provided with forms describing the death benefits mandated by the Internal Revenue Code within certain specific time periods -- frequently, when an individual first becomes eligible to participate in the plan. But, there are special rules designed to protect a participant's spouse.

The law requires the entire death benefit of a married participant be paid to the surviving spouse. Therefore, a participant's spouse must consent in writing to any arrangement changing the form of payment or naming another person as beneficiary of the participant's funds. The spouse's consent must be made on appropriate forms provided by the plan administrator; the spouse's signature must be witnessed by a notary public or a plan representative. There is no limit on the number of times a beneficiary designation may be changed -- but each requires the spouse's consent if anyone else is named as beneficiary.

Given these special rules for married participants, it is important to maintain accurate records of each participant's marital status, and to ensure that the forms are provided in a timely manner. Failure to comply can result in penalties and legal liabilities to the plan.

## Termination Notices

When a participant with a vested interest in the plan terminates employment, the administrator should perform a variety of duties. A notice should be prepared for the terminated participant describing the amount of the vested interest. The participant may elect to have the vested benefit distributed immediately, or have the plan hold it until a later date -- retirement age, for example. If the vested benefit is \$5,000 or less, the plan may require the participant to "cash-out" within a reasonable time after employment ends. If the participant and spouse choose to a payout exceeding \$5,000, they must consent in writing to the payment and release the plan and plan administrator from any further claim for benefits.

The plan administrator must provide a notice of special tax rules which explains the right to "roll over" funds to another qualified plan or to an individual retirement account -- or to elect favorable income tax treatment for the distribution. The notice should also explain the penalty tax on early distributions (i.e., 10% penalty on distributions prior to age 59 1/2). The plan administrator should furnish all of this information when the payment is a single sum, which may be eligible for a rollover.

Federal law requires that the plan administrator withhold income taxes from distributions from the plan. Twenty percent normally must be withheld from a distribution unless a "direct rollover" is elected. Before paying any distribution, the plan administrator must provide the participant with a notice of withholding on payments.

## Divorce-Related Payments

A special rule applies where state courts mandate the distribution of retirement funds to a spouse, former spouse, child or other legal dependent of a participant. These orders, issued in connection with divorce proceedings, are known as "Qualified Domestic Relations Orders" (QDROs); the plan administrator is required to send the QDRO to the participant and any other "alternate payee." A copy of the order should also be sent to the plan's legal counsel, to determine if the form and content of the order in fact meet the requirements for being a QDRO. The plan administrator, based on the opinion of counsel, should then adopt an approval of the QDRO, to be sent to all affected parties, describing whether and how the plan will pay benefits pursuant to the order.

## Retirement Plan Investment Aspects

Although not specifically a plan administrator's duty, the plan's investment activities should be closely monitored, and in some cases implemented by the plan administrator. For the most part, investment rights and obligations are vested in the plan trustees or other fiduciaries. However, in medical practices the plan administrator, trustee, and fiduciary are often the same persons. The investment activities often include loans to participants and "directed" or "earmarked" investments.

Loans from a qualified retirement plan must be properly documented. As a result, participants requesting a loan should submit a written application to the plan administrator. The administrator should review the application and make a recommendation on it to the plan trustees. If the application is approved, the administrator should ensure that timely repayments on the loan are made (including principal and interest). Under current rules, in order for loans to be non-taxable to the recipient, they must be repaid within five years, with level repayments of principal and interest made at least quarterly.

The plan administrator should also facilitate directed investments for earmarked accounts -- transmitting to the trustees any participant's written request for investment of particular account balances or portions thereof in selected investments. All investment direction requests should be retained with the permanent plan records should questions arise about losses sustained, investments actually made, etc.

## Conclusion

We have only scratched the surface of a retirement plan administrator's responsibilities. They are, obviously, multifaceted and complex. But plan administration is also an area of significant legal and financial exposure, with potential large penalties for faulty performance. Therefore, you cannot turn a blind eye toward the operation of your retirement plan: a professional plan administrator's activities flow from your instruction and the information you provide; therefore, check in with the administrator on a regular basis and make sure each of the responsibilities are being fulfilled. In the end, the responsibility -- financial and legal -- is yours.

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