The Employee Retirement Income Security Act (ERISA) specifically spells out which parties can bring civil enforcement actions to recover plan benefits they believe are owed to them. However, new players are attempting to push the boundaries of ERISA claims beyond the letter of the statute. In addressing claims brought under ERISA, the U.S. Supreme Court has stated that the civil relief provisions were not intended to be read expansively; but where should the lines be drawn?

The answer, at least according to most courts, lies in Congress’s original intent behind ERISA to protect plan participants and beneficiaries. Courts faced with claims from parties not specifically afforded relief under the letter of the statute typically reject these claims as inconsistent with Congress’s intent. Examples of these rejections have proliferated in recent years, as an ever-expanding class of plaintiffs has sought to file civil claims under ERISA as either participants, beneficiaries or assignees of such individuals.
Who Is Protected Under ERISA?

Congress passed ERISA to protect the nation’s “employees and their dependents.” Consistent with this purpose, plan administrators typically assume that the universe of ERISA claimants is limited to employees or their beneficiaries. This assumption makes sense in light of the purposes underlying ERISA as well as the statute’s provisions outlining who can bring suit. The class of plaintiffs permitted to bring ERISA claims generally is limited to participants and beneficiaries, and the Supreme Court has repeatedly cautioned that these provisions are to be strictly construed, with relief limited to the parties “carefully enumerate[d].”

If ERISA clearly defines the parties entitled to relief, then why is there any confusion over who can bring suit? The issue most commonly arises when third parties claim they have been assigned the claim of a participant or beneficiary. Courts generally agree that, where plans allow, participants and beneficiaries can transfer their claims for reimbursement under ERISA welfare plans to third-party health care providers, called assignment. Courts carefully scrutinize the circumstances in determining whether an assignment is valid and have rejected assignments to non-health care providers. Courts are concerned about the possibility that ERISA claims could become marketable commodities. Two recent Supreme Court cases may have made it more likely a wider pool of plaintiffs might bring claims under ERISA.

Accordingly, where a health care provider has a valid assignment from a participant or beneficiary, that provider might have standing to bring a benefit claim under ERISA. Courts, recognizing that expanding ERISA standing beyond those narrow circumstances will not further ERISA’s purposes, have soundly rejected recent attempts to expand this narrow exception to ERISA’s standing requirements. For example, courts have refused to recognize purported assignments to non-health care providers and, even in cases involving providers, courts have carefully scrutinized the circumstances in determining whether the assignment is valid.

Fear of Commoditization of ERISA Claims

Courts have had to fend off claims from more unlikely sources, including individuals with, at best, a tangential relationship to the underlying benefit. In these circumstances, courts have expressed concerns about the commoditization of ERISA claims and have been quick to deflect attempts by third parties to profit by acquiring claims of participants or beneficiaries.

In one particularly egregious example, an individual purchased the claims that have been assigned to them by participants or beneficiaries, but only when the assignment is consistent with plan language and where it was given in exchange for medical treatment from that provider and the assignment is otherwise valid.

Why have courts been willing to allow ERISA claims by health care providers in these circumstances? Plainly, it is not for the benefit of the health care providers, as there is no dispute that ERISA is unconcerned with ensuring that providers receive payment. Rather, courts have reasoned that it makes sense to allow participants to assign their claims to providers because it simplifies the billing structure between the patient, the care provider and the benefit plan, enhancing participants’ access to benefits.

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of over 600 mental health care patients from mental health care providers to whom the patients had previously assigned their claims. The plaintiff, Stephen Simon, requested that the court recognize these purchased “assignments.” The court refused on the grounds that doing so would “[transform] health benefit claims into a freely tradable commodity” and could “lead to endless reassignment of claims.” Courts’ reactions to Simon exemplify the disdain felt toward attempted commoditization of ERISA claims. At least five circuits have rejected similar claims brought by Simon, even going so far as to “alert other federal courts” to his attempts and threaten sanctions against him for filing frivolous claims.

In an example involving an attempted assignment by a plan fiduciary, a company contracted with employers that sponsored health care plans to audit the plans for situations in which the plans could recover from insurance providers (e.g., situations in which the plans were secondarily liable under the plans’ coordination of benefits provisions but paid benefits over the entities that were primarily liable). If the auditing company uncovered any potential claims, it would litigate the claims and receive a portion of any amounts the employers recovered. The court assumed that the employer was a fiduciary with the right to sue under ERISA, but it refused to extend the right to an agent of the fiduciary, even though the agent was entitled to a portion of the proceeds. The court explained that courts had not previously permitted such an expansion of the list of parties entitled to relief under the statute. While courts may find it easier to rebuff claims brought by individuals seeking only to make an easy dollar, they are equally quick to foreclose attempts by individuals to expand the class entitled to relief even when the individuals lack any profit motive. For example, a court refused to honor a claim brought by a relative of a man receiving benefits under his former spouse’s insurance policy, even when the former spouse (i.e., the plan participant) agreed in writing to have the reimbursement sent to the relative. The court explained that the intent of ERISA was not to treat all assignees of participants as “beneficiaries” under ERISA, as such an interpretation would enable the commoditization of health benefit claims. Therefore, even where a plaintiff might claim that equity is in his or her favor of granting an exception, courts have refused, fearing that doing so will open the door to individuals seeking only to profit.

This reading of the statute’s standing provisions helps explain why plans are given significant freedom to adopt plan provisions limiting the assignment of claims. Even where plan provisions permit assignments, those assignments are construed very narrowly and the scope set forth in the permission is strictly enforced. In this way, health care plans remain faithful to the underlying purpose of ERISA and will not incidentally give rise to an ERISA claims market.

Motivations for New Claimants
Why are these new players—particularly those with a profit motive—appearing with more frequency in recent years? The blame may fall on two recent Supreme Court cas-
that, plaintiffs’ lawyers have been contending, sweetened the pot for plaintiffs that prevail under ERISA. In one case, the Supreme Court, they say, expanded the understanding of the types of equitable relief available under ERISA claims, effectively reading equitable relief (which had previously been widely understood to not include financial relief) to allow monetary relief in certain circumstances. In the second case, the plaintiffs’ bar claims that the Supreme Court purportedly facilitated attorney fee rulings in ERISA cases. Plaintiffs’ lawyers have viewed these two cases as providing a greater upside to ERISA claims, motivating them to find new classes of plaintiffs in an effort to capitalize on these alleged changes.

Are Courts Likely to Expand the Permitted Class of ERISA Claimants?

As these examples demonstrate, attempts by new varieties of claimants to bring ERISA claims should be viewed with great skepticism. A plan sponsor on the receiving end of such an attempt should remember that ERISA was meant to protect employees and their beneficiaries, not third-party providers. ERISA’s purpose weighs heavily in courts’ decisions to refuse to hear a claim brought by someone other than an enumerated party. Exceptions to this rule are rare and, while new classes of plaintiffs appear unafraid to test the boundaries of ERISA’s civil relief provisions, courts are generally cognizant that they should limit relief under ERISA to those who Congress believed required statutory protection.

Endnotes

1. ERISA §502(a)(1)(B).
2. Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 25 (1983) (stating that Section 502(a) does not attempt to reach "every question" that arises under ERISA).
3. ERISA §2.
4. ERISA §502(a). It should be noted that plan fiduciaries and the Secretary of Labor are also permitted to bring claims under this provision in certain circumstances; however, ERISA was not principally designed to protect them, and they do not generally contribute to the new class of ERISA plaintiffs appearing in courtrooms.
5. Franchise Tax Bd. of Cal., 463 U.S. at 27.
6. No provision in ERISA specifically permits this practice, but courts have held that the lack of an express prohibition in the statute means that assignment is implicitly permitted. See, e.g., St. Francis Reg’l Med. Ctr. v. Blue Cross & Blue Shield of Kan., Inc., 49 F.3d 1460, 1464–65 (10th Cir. 1995) (“ERISA’s silence on the issue of the assignability of insurance benefits leaves the matter to the agreement of the contracting parties.”).
9. Id.
11. Id.
12. Id. (expressing desire to also deny standing to individuals who acquire claims “solely for the purpose of litigating them”).
15. Id. at 880.
16. Id. at 882.
18. Id. at 346 n.2.