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Self-Funded Plans as Fiduciaries

Self-funded health plan sponsors and their employees who make decisions for the plan are fiduciaries with specific duties under the law. If a self-funded health plan sponsor or its employees fail to act in accordance with their fiduciary duties, they can be subject to corporate and personal liability. Accordingly, understanding fiduciary duty is crucial for those individuals and committees trusted with self-funded plan decisions.

What is a Fiduciary?

Generally, a fiduciary is a person or organization that makes financial or other decisions on behalf of another party. A fiduciary has a legal and ethical obligation to act in the other party's best interest.

Who is a Fiduciary under ERISA?

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for health plans in private industry to provide protection for individuals in these plans.

Under ERISA, a person or entity is a fiduciary with respect to a health plan if it:

- Exercises discretionary authority or control with regards to management or administration of a health plan or disposition of its assets; or
- Renders investment advice with respect to plan money or property for a fee or other compensation.[1]

Self-Funded Plans are Fiduciaries and have Special Duties

Because private employers[2] acting as self-funded plan sponsors exercise authority and control over the management of the health plan, they are fiduciaries with special duties under ERISA. However, it is important to note that the health plan itself is considered a separate legal entity from the employer, and only those individuals or committees entrusted with authority over management or administration of the health plan are plan fiduciaries.

ERISA requires fiduciaries to:

- Maintain loyalty to the plan by running the plan solely in the interest of participants and beneficiaries for the exclusive purpose of providing benefits and paying plan expenses;
- Adhere to the terms of plan documents (to the extent that the plan terms are consistent with ERISA);
- Hire and monitor plan service providers and ensure they perform their roles in accordance with the contract and plan documents;
- Ensure the plan only pays reasonable costs for claims and does not pay excessive fees to service providers;
- Hold plan assets (if the plan has any) in trust;
- Diversify the plan's investments; and
- Carry out duties prudently, including obtaining regular, ongoing access to plan claims data, reviewing it for accuracy, recovering overpayments, and other regular monitoring. [3]

ERISA Fiduciary Duties Explained

The duty of loyalty requires fiduciaries to act solely in the interest of the plan participants and beneficiaries and for the exclusive purpose of providing benefits to them. This duty prohibits conflicts of interest and self-dealing by fiduciaries.

Adhering to the terms of the plan document is a central responsibility of a plan fiduciary. A plan fiduciary must be well acquainted with its plan document to ensure adherence with the plan, to the extent that plan terms are consistent with ERISA.[4]

The duty to act prudently is an essential obligation for plan fiduciaries under ERISA. Plan fiduciaries should act with the care, skill, and diligence that a prudent person familiar with such matters would use in the same circumstances. Prudence focuses on the fiduciary decision-making process. Plan fiduciaries should document their decisions as well as the basis for their decisions. Even if outside actors such as third-party administrators (TPAs) assume responsibility for certain plan duties, fiduciaries are obligated to take consistent measures to review and assure the propriety of financial decisions related to their health plan.

In order to carry out their duties prudently, fiduciaries must understand the applicable regulations, request relevant data and information, and then analyze that data and information to ensure that the plan is paying reasonable costs and fees and vendors are following the terms of their contracts. Because acting prudently requires expertise in a variety of areas, fiduciaries should hire experts in various subject areas to provide advice on how the sponsor can carry out their duties prudently.[5] Highlight Health is proud to offer trusted services from various subject-matter experts.

Fiduciary Liability

Plan fiduciaries can limit their liability through demonstrating that they performed their plan-related responsibilities properly. To ensure thorough documentation of fiduciary decisions, plan sponsors should form a fiduciary committee for the health plan with a written charter setting out the committee's responsibilities. The fiduciary committee should meet regularly and establish and document the processes and rationale used to make decisions and carry out their fiduciary duties.

Fiduciaries who breach their duties may be personally liable to restore any losses to the health plan or to restore any profits made through improper use of the health plan's assets. ERISA can also hold fiduciaries responsible for the breaches of their co-fiduciaries, including service providers who act as named or functional fiduciaries. A fiduciary must act if aware of a breach by another fiduciary.

It is again important to emphasize that although plan sponsors may hire service providers to handle fiduciary functions (and delegate fiduciary responsibility for those functions by way of contract), plan fiduciaries remain responsible for the selection of and duty to monitor all plan service providers.

Using Data to Inform Sound Fiduciary Strategies

While these fiduciary duties and liabilities may seem formidable, ERISA provides plan sponsors a great amount of leverage in how they can administer their health plan. ERISA empowers plan sponsors and their fiduciaries to carefully draft their health plan documents, review and analyze claims-related data, and make informed decisions about how to process and pay claims.

The federal Consolidated Appropriations Act of 2021 ("CAA"), which increased transparency by prohibiting gag-clauses regarding healthcare pricing and quality information, enables plan fiduciaries to obtain the information necessary to make prudent, informed decisions. Providers and networks can no longer withhold claims data from plan sponsors by asserting that contractual rates for services are confidential and proprietary.

Through our claims review process, Highlight Health helps both plans and participants save money, which ensures self-funded health plans fulfill their ERISA fiduciary duties. Highlight Health can also help the plan sponsor review plan documents and contracts to alert plans of language which could prevent plan fiduciaries from taking actions to protect plan funds.

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[1] 29 U.S. Code § 1002.

[2] Although self-funded health plans sponsored by government entities and churches are not subject to the requirements of ERISA, these types of plan sponsors are still considered fiduciaries and have fiduciary duties.

[3] U.S Department of Labor, "Understanding Your Fiduciary Responsibilities Under a Group Health Plan", September 2023.

[4] U.S. Department of Labor, "Fiduciary Responsibilities".

[5] Society for Human Resource Management, "What is a fiduciary, and what are "fiduciary responsibilities" under an ERISA-covered plan?".