



DOCUMENTING THE FIDUCIARY PROCESS

Fiduciary Governance Guide for Health and Voluntary Benefit Plan Sponsors

Understanding ERISA fiduciary duties, the litigation trends driving new scrutiny of health and voluntary benefit plans, and how a documented fiduciary process can help plan sponsors demonstrate prudent decision-making.

Executive Summary

Employee benefit plan fiduciaries have long understood that ERISA's rigorous standards of conduct apply to retirement plans. What is changing is the scope of scrutiny: Litigation, once concentrated almost entirely on 401(k) and pension plans, is increasingly reaching group health plans and voluntary benefit offerings, such as accident, critical illness and hospital indemnity insurance.

This shift means that employers who have historically viewed fiduciary governance as a retirement plan concern now face a similar standard for their health and voluntary benefit programs. Plaintiffs are alleging that employers failed to prudently select and monitor insurance carriers, third-party administrators and pharmacy benefit managers, or failed to evaluate whether premiums and broker compensation were reasonable.

A well-documented process is often the strongest defense against these claims. This guide outlines the fiduciary duties that apply to health and voluntary benefit plans, the litigation trends driving new attention to this area, and a practical approach sponsors can use to document, evaluate and strengthen their fiduciary process.



The Expanding Litigation Landscape

For years, ERISA fiduciary litigation centered on retirement plan fees, investment options and recordkeeping arrangements. That focus is broadening in several notable ways.

FROM RETIREMENT PLANS TO HEALTH PLANS

ERISA fiduciary duties have traditionally been enforced in the context of retirement plans, though there are early signs that this may be shifting. Recent litigation against large employer health plans has been allowed to proceed past the motion-to-dismiss stage, a meaningful departure from earlier rulings, based on allegations that plan fiduciaries failed to prudently select and monitor insurance options and services. Litigation in this area is ongoing, and ultimate outcomes remain to be seen.

VOLUNTARY BENEFITS UNDER NEW SCRUTINY

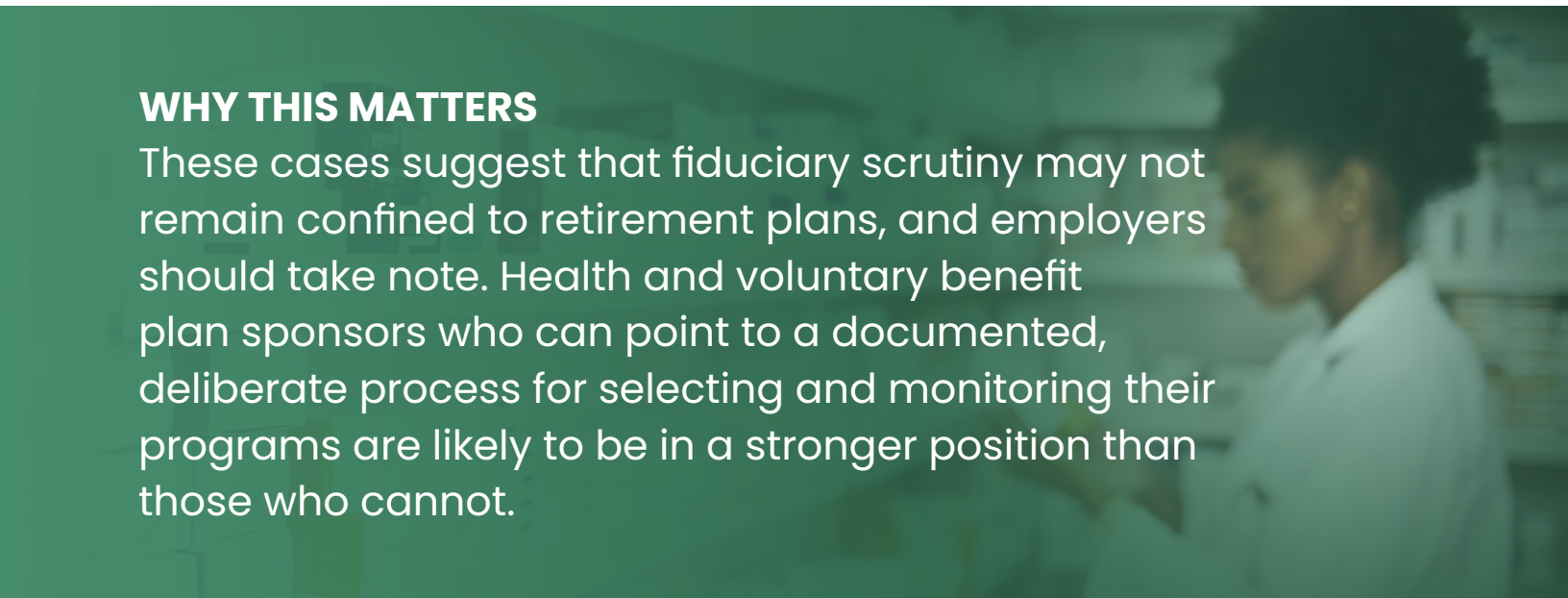
Coordinated class actions have also emerged against employers offering voluntary benefits such as accident, critical illness and hospital indemnity coverage. Among other things, these cases allege inadequate oversight of the carriers providing this coverage and question whether broker compensation was reasonable given the services actually provided. A key question in these cases is whether the employer's conduct amounted to endorsement such that the coverage falls outside ERISA's voluntary plan safe harbor.

PHARMACY BENEFIT MANAGER (PBM) OVERSIGHT

PBM arrangements have also become a focus of fiduciary breach allegations, with some cases raising questions about whether employers adequately evaluated PBM pricing, rebate structures and contract terms rather than relying on default arrangements presented by carriers or consultants.

WHY THIS MATTERS

These cases suggest that fiduciary scrutiny may not remain confined to retirement plans, and employers should take note. Health and voluntary benefit plan sponsors who can point to a documented, deliberate process for selecting and monitoring their programs are likely to be in a stronger position than those who cannot.



Understanding ERISA Fiduciary Duties

Many of the actions involved in operating an employee benefit plan make the person or entity performing them a fiduciary under ERISA. Using discretion in administering and managing a plan or controlling the plan's assets makes that person a fiduciary to the extent of the person's discretion or control. Thus, fiduciary status is based on the functions performed for the plan, not just a person's job title.

Fiduciaries have important responsibilities and are subject to strict standards of conduct. These responsibilities include:

- Acting solely in the interest of plan participants and beneficiaries, not the interests of the employer or any service provider;
- Carrying out their duties prudently, with the care, skill and diligence that a prudent person familiar with such matters would use;
- Administering the plan in accordance with its governing documents, to the extent those documents are consistent with ERISA; and
- Ensuring that fees paid to carriers, administrators, brokers and other service providers are reasonable for the services actually delivered.

Because the duty of prudence focuses on process rather than results, the single most important thing a fiduciary can do to reduce risk is to build, follow and document a deliberate decision-making process. Prudent decision-making often requires expertise in a variety of areas, so a fiduciary who lacks that expertise will want to hire someone with professional knowledge to carry out those functions.

Why Documentation Matters

When a fiduciary decision is challenged, whether informally by a participant or formally through litigation or a Department of Labor inquiry, the central question is rarely whether the decision was perfect in hindsight. It is whether the fiduciary followed a prudent process at the time the decision was made.

A documented process, meeting minutes, vendor comparisons, fee benchmarking, and a clear record of who decided what and why allow a fiduciary to demonstrate that judgment was exercised responsibly. Absent that documentation, even a reasonable decision can be difficult to defend years later.

Building a Documented Fiduciary Process

The following checklist organizes fiduciary process documentation into four practical categories. Together, these focus areas offer a starting point for demonstrating prudent governance of health and voluntary benefit plans.

I. GOVERNANCE STRUCTURE

Fiduciary Committee Formation

Identify plan fiduciaries by name and form a committee defining roles, authority and responsibilities.

Ongoing Training and Meetings

Schedule routine fiduciary training and committee meetings, with minutes recorded.

II. PLAN COMPLIANCE AND DESIGN

ERISA Safe Harbor Status

Confirm whether employer involvement in voluntary benefit offerings (such as selecting the insurer or endorsing the program) could cause an otherwise-exempt program to fall under ERISA.

Plan Document Review

Periodically review plan documents, SPDs and any SMMs for consistency with actual plan operations.

Claims Procedures

Establish and document a reasonable claims process to ensure consistent benefit determinations.

Government Disclosures

Ensure required filings, such as Form 5500s, are prepared and submitted on time.

Contribution Timing

Maintain a documented schedule for depositing participant contributions in compliance with DOL standards.

III. VENDOR OVERSIGHT

Competitive Vendor Selection

Use a structured process to compare carriers, administrators and PBMs, benchmarking fees against market alternatives.

Service Agreements and Fee Disclosure

Document the hiring process for service providers, including fee transparency and applicable disclosure obligations.

Ongoing Monitoring

Establish a recurring process to review provider performance, fees and value after they are hired, rather than treating vendor selection as a one-time event.

IV. RISK MITIGATION

Fiduciary Liability Insurance

Confirm that fiduciary liability coverage is in place, extends to health and voluntary benefit programs, and is reviewed at each renewal.

ERISA Fidelity Bonding

If applicable, verify that fiduciaries and anyone handling plan funds are covered by a bond meeting ERISA’s requirements.

ERISA Counsel

Consult experienced ERISA counsel periodically to confirm that fiduciary obligations are being met and to address open questions.

Fiduciary Process Checklist At-a-Glance

GOVERNANCE STRUCTURE	☐ Fiduciary Committee Formation
	☐ Ongoing Training & Meetings
PLAN COMPLIANCE & DESIGN	☐ ERISA Safe Harbor Status
	☐ Plan Document Review
	☐ Claims Procedures
	☐ Government Disclosures
	☐ Contribution Timing
VENDOR OVERSIGHT	☐ Competitive Vendor Selection
	☐ Service Agreements & Fee Disclosure
	☐ Ongoing Monitoring
RISK MANAGEMENT	☐ Fiduciary Liability Insurance
	☐ ERISA Fidelity Bonding
	☐ ERISA Counsel

Consequences of a Fiduciary Breach

The standards described in this guide are not merely best practices; they can carry the following legal and financial consequences.

A fiduciary who breaches ERISA's standards of conduct can be personally liable for plan losses or improper profits, face a 20% penalty assessed by the DOL, be removed from their fiduciary role, and in serious cases, be exposed to criminal penalties.

The DOL's Voluntary Fiduciary Correction Program allows fiduciaries who identify certain violations to self-correct and self-report without triggering an enforcement action.

Conclusion and Next Steps

The expansion of fiduciary litigation into health and voluntary benefit plans appears to be a meaningful shift in the risk landscape for employers as plan sponsors. While the legal landscape continues to develop, a disciplined response may help reduce risk: Build a fiduciary process, follow it consistently and document each step.

Plan sponsors do not need to navigate this alone. We can help assess current practices against the framework outlined in this guide, identify documentation gaps and connect plan sponsors with the governance services needed to close them. Consider using this guide as the basis for a candid, structured conversation about where your current fiduciary process stands today, and what it would take to strengthen it before your next plan renewal.