The road ahead:

Traversing the Department of Labor's changing compliance landscape

Compliance Consulting



Suzanne Bach, JD, CEBS

Amanda Curtin, JD

Feb. 17, 2026

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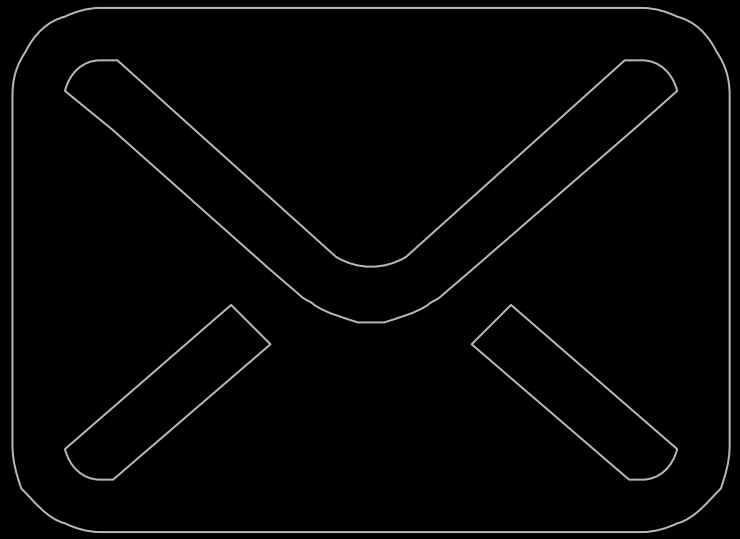

Any questions?

- You can submit questions using the Q&A box on your computer screen.

  We may attempt to answer some questions during the Q&A portion, near the conclusion of the presentation, if time permits.



Upcoming webcasts for our spring 2026 CLASS series

Fertility benefits: Navigating through 2026 and beyond

Tuesday, March 10

Speakers: Rory Akers, JD and Paula Day, JD

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HIPAA Privacy: The basics and what's new for 2026

Thursday, April 16

Speakers: Ethan McWilliams, MBA, and Ruhe Wadud, JD

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Today's speakers



SUZANNE BACH, JD, CEBS
Vice President
Compliance Consulting



AMANDA CURTIN, JD
ERISA Compliance Attorney
Compliance Consulting

Agenda

- New EBSA leadership and important updates
- Current enforcement priorities
- EBSA limited amnesty programs (VFCP & DFVCP updates)
- Fiduciary duty reminders



Your DOL insiders at Lockton

- **Suzanne:** at DOL for 17 years, served as EBSA's acting chief of health and financial investigations
- **Amanda:** in DOL's Kansas City office for 13 years, specializing in health plan investigations
- Two other Compliance Consulting team members with DOL backgrounds
- We'll cover **what's new at DOL, and how employers can use that information**



New EBSA leadership and important updates

EBSA insights

New EBSA leadership - Assistant Secretary Daniel Aronowitz

- Former president and founder of Encore Fiduciary
- Hopes to bring turnaround-focused, business-friendly, and litigation-reforming approach
- Seeks collaboration and innovation with industry stakeholders

Career staffing changes

- Turnover
- Budget cuts



Current enforcement priorities

EBSA's health enforcement priorities

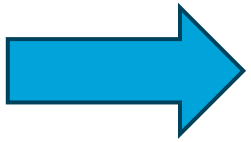
- Cybersecurity
- Barriers to mental health and substance use disorder benefits
- Surprise billing
- Fraudulent MEWAs



Out with the old…and in with the new

FY 2025 Enforcement Priorities

- Mental Health Parity (NQTLs)
- Emergency Services
- Service Provider Self-Dealing
  - TPAs/Insurers/PBM fees



FY 2026 Enforcement Priorities

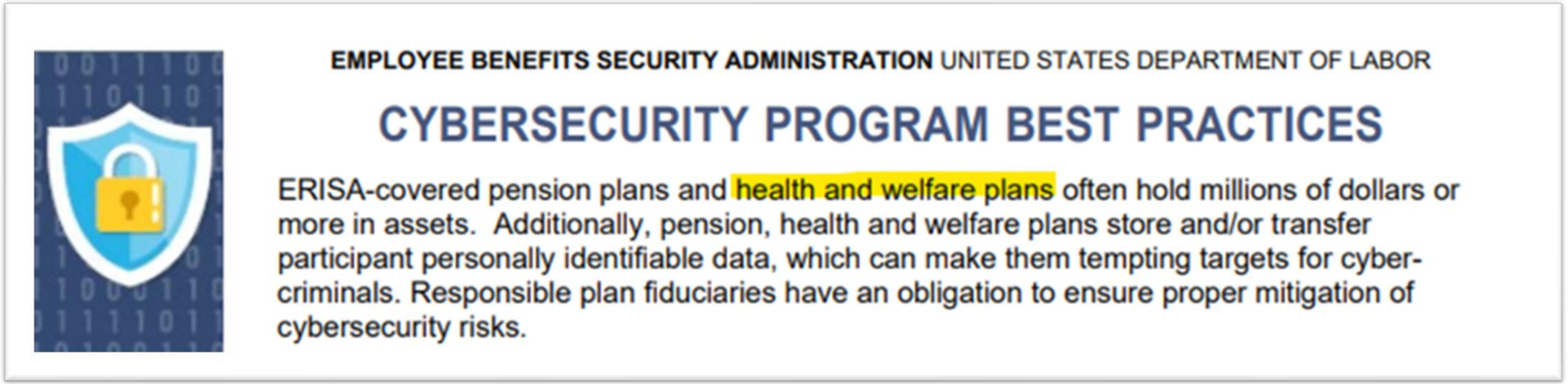
- Cybersecurity
- Barriers to mental health and substance use disorder benefits
- Surprise billing
- Fraudulent MEWAs

What's missing?

- Transparency, hidden fees, self-dealing…
- **Caution:** Does NOT mean plan sponsors are off the hook on these issues

Cybersecurity

- A new national enforcement priority
- April 14, 2021: EBSA cybersecurity guidance issued
- Sept. 6, 2024: EBSA released Compliance Assistance Bulletin 2024-01, confirming these rules and best practices apply to health and welfare plans, too



EMPLOYEE BENEFITS SECURITY ADMINISTRATION UNITED STATES DEPARTMENT OF LABOR

CYBERSECURITY PROGRAM BEST PRACTICES

ERISA-covered pension plans and health and welfare plans often hold millions of dollars or more in assets. Additionally, pension, health and welfare plans store and/or transfer participant personally identifiable data, which can make them tempting targets for cyber-criminals. Responsible plan fiduciaries have an obligation to ensure proper mitigation of cybersecurity risks.

Cybersecurity



Plans must have a formal, well-documented cybersecurity program

01 Clearly defined security roles and responsibilities

02 Strong access control procedures

03 Reliable third-party audit of security controls

04 Prudent annual risk assessments

As cybercriminals constantly adapt, so too must the best practices.

WHY should H&W plan fiduciaries be concerned with cybersecurity?

01

It's a fiduciary consideration for all ERISA plans

- Unprotected or under-protected participant data can lead to fraud or identity theft losses, potentially resulting in lawsuits and regulatory attention.
- Baseline practices such as multifactor authentication encryption, and regular training demonstrate fiduciary prudence.

02

Plans possess high-value data targets

Participant data including SSNs, bank data, and account balances offer everything criminals need for identity theft and unauthorized distributions from account-based plans such as an HSA or health FSA.

03

Exposure from third-party vendors

Vendors like recordkeepers and TPAs often store sensitive plan data and can be vulnerable to cyber incidents. Fiduciaries should actively assess vendor controls and protections instead of just trusting assurances.

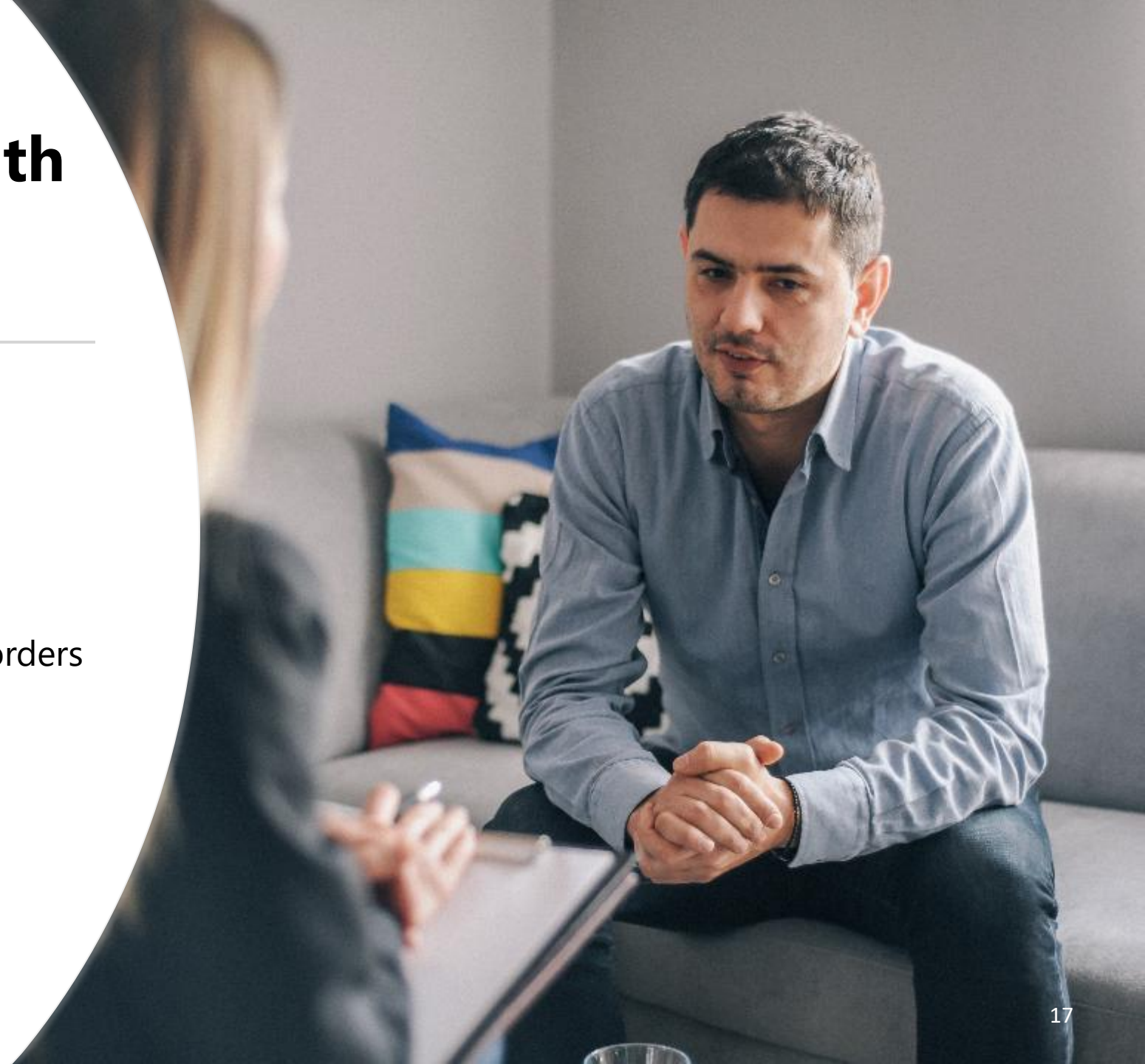
04

Strong incident response planning

A rapid, coordinated response is critical to limiting participant harm and restoring system integrity after a breach. Documented procedures, clear vendor roles, and appropriate cyber insurance help contain losses and fiduciary risk.

Barriers to mental health and substance use disorder benefits

- Network inadequacy
- Burdensome claims process
- Impermissible exclusions, such as:
  - ABA therapy for autism
  - Nutritional counseling for eating disorders
  - Speech therapy for mental health disorders
  - MAT for opioid treatment



No Surprises Act (NSA)

EBSA reviewing whether plans and issuers:

- Follow the prudent layperson standard
- Apply in-network charges
- Provide notices and disclosures
- Comply with payment timelines during IDR process

IDR issues IRL

- Real-life impact for plans
- Beware: providers are winning at 80%



Fraudulent MEWAs (wait…what's a MEWA?)

Multiple Employer Welfare Arrangement (MEWA)

One plan for two or more employers that are not sufficiently related through common ownership

- Fully insured MEWAs have a licensed insurance carrier
- Self-insured MEWAs are illegal in most states and are considered uninsured insurance companies

Enforcement

- EBSA focuses on unpaid claims – often criminal MEWAs
- States are concerned with MEWAs, too

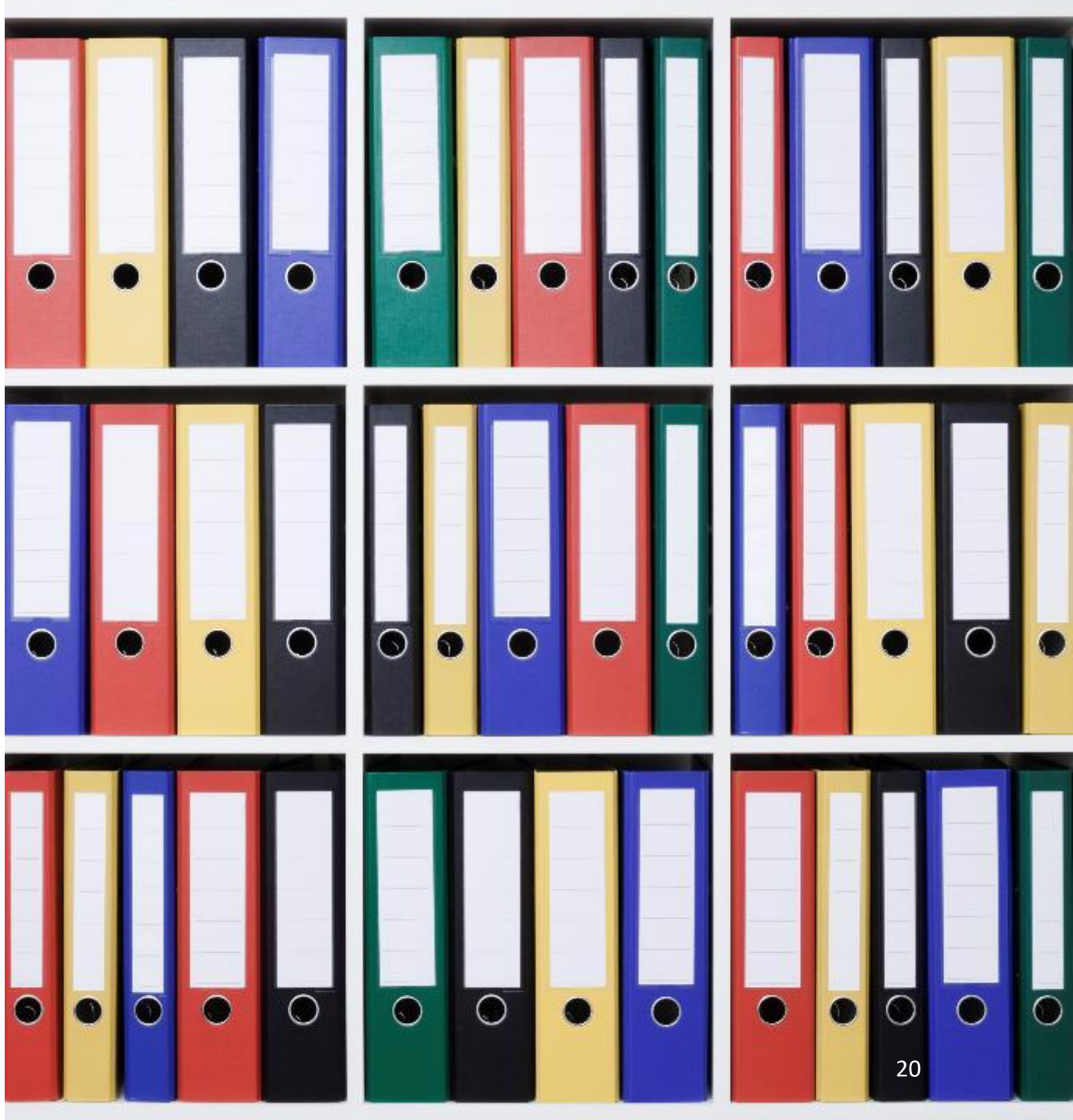
DOL Exemptions

- Specific MEWAs may receive exemptions from DOL



Fraudulent MEWAs

- MEWAs are required to file the Form M-1 annually and midyear at various trigger points
- M-1 filing exceptions:
  - Inadvertent MEWAs (max 12 months)
  - At least 25% shared common control of participating entities
  - Less than 1% of participants are "outsiders"
- M&As consider past noncompliance for due diligence



EBSA limited amnesty programs (VFCP & DFVCP updates)

Voluntary compliance options

Voluntary Fiduciary Compliance Program (VFCP):

- revising Form 5500s
- Delinquent employee contributions

Delinquent Filer Voluntary Compliance Program (DFVCP):

- Missed Form 5500s
- NEW Form M-1 relief

FUN FACT
In 2024, EBSA received **1,037 VFCP** applications and **20,009 DFVCP** applications



Fiduciary duty reminders

Fiduciary responsibilities

Understand your fiduciary duties

- Who is a fiduciary?
- What are fiduciary responsibilities?

Implement good plan governance

- What you need to review
- Insurance strategies

Primary Considerations

- Adherence to plan governing documents
- Selection and oversight of service providers
- Reporting and disclosure responsibilities



Who is a fiduciary?

- Fiduciaries are identified by their actions, not their titles.
- Anyone who exercises discretionary authority or control over the management of the plan's assets or administration is a fiduciary.
- Statute of limitations is six years under ERISA.
- ***The plan likely has fiduciaries beyond the fiduciaries named in the plan documents.***



What are a fiduciary's responsibilities?

- Act solely in the interest of participants/beneficiaries.
- Defray reasonable plan expenses.
- Perform duties with the care, skill, prudence, and diligence that a prudent person familiar with such matters would use (i.e., duty of care).
- Follow the plan documents.
- Diversify investments (i.e., trusts).



Fiduciary governance is a process

Best practices:

- Formal committee
- Committee charter
- Meet regularly
- Take meeting minutes
- Fiduciary training



Insurance strategies to protect plan and fiduciaries from risk



Fidelity Bond

Insures the plan against losses due to fraud or dishonesty on the part of persons handling plan assets.



Fiduciary Liability Insurance

Insures employer and fiduciaries against losses resulting from breach of a fiduciary duty.

Not required but highly recommended.



Indemnification

Service provider agrees to compensate fiduciary for personal loss resulting from fiduciary act.

Consider implementing a health and welfare plan fiduciary committee

Lockton's Fiduciary Governance Toolkit

- Self-directed tool that provides sample documents, checklists, and recommended best practices
- Direct access to Lockton compliance attorneys that can address questions related to fiduciary matters
- Procedures for delegating plan functions and monitoring service providers

***New cybersecurity checklist included**

Today's "best practices" will quickly become industry standard



<u>WHY</u> you should exercise your fiduciary duties?

- $1.4 billion recovered by EBSA investigations in 2024
- ~ $550 million were informally resolved participant complaints
- 71% of investigations resulted in plan and fiduciary corrections

01

“Direct” liability

Fiduciaries are responsible for a breach involving their own responsibility

02

“Co-fiduciary” liability

Fiduciaries can be held responsible for the breach of another

03

Consequences

- Fines
- Personally liable to restore plan losses
- Removal/ban from fiduciary positions
- Imprisonment for criminal actions

Lockton's National Benefits Survey results

For the 557 employers surveyed that are implementing a process for their fiduciary responsibilities, what are they doing?



39%	Take prudent steps to select and monitor service providers.
38%	Have launched a formal health & welfare benefits governance committee.
21%	Ensure a plan is administered according to its written terms.
3%	Hold regular governance committee meetings and carefully document their decisions.

Questions?

INDEPENDENCE CHANGES EVERYTHING.



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