

Group Insurance Board Fiduciary Updates: Health and Welfare Plans in Focus

Item 4 – Group Insurance Board

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Informational Item Only

No board action is required

Presentation Outline

- Origins of fiduciary duties
- Key fiduciary duties
- Fiduciary issues in focus for health and welfare plans
- Actionable guidance for health and welfare plan fiduciaries

Origins of Fiduciary Duties

- Common Law of Trusts
- Employee Retirement Income Security Act (ERISA)
- Wisconsin Trust Law (Chapter 701 of the Wisconsin Statutes) and Uniform Prudent Investor Act (Chapter 881)
- Chapter 40

Key Fiduciary Duties

- Prudence: reasonable person standard
- Loyalty: act exclusively in the best interest of plan participants
- Follow the plan document and applicable law

Significant Fiduciary Issues for Health and Welfare Plan Fiduciaries

- Data Protection and Cybersecurity
- Generative AI
- Reasonableness of Compensation and Fees

Data Privacy and Cybersecurity

Applicable Laws

- Health Insurance Portability and Accountability Act (HIPAA)
- Chapter 40
- Wis. Stat. §134.98

Instructive Laws

- European Union General Data Protection Regulation (2016)
- Other state data privacy laws

Data Sharing

- Required with vendors and employers
- For the purpose of plan administration
- Discretionary in the best interest of plan participants
- Must comply with the law

Actions at the Federal Level: Cybersecurity in Health Care

- Senate Health, Education, Labor and Pensions Committee (HELP) bi-partisan workgroup on strengthening cybersecurity in health care and the public sector

Actions at the Federal Level: ERISA

- U.S. House of Representatives Committee on Education and the Workforce Request for Information on how to build upon and strengthen ERISA:
 - Identify obligations of health plan fiduciaries
 - Clarify legal responsibility to protect against cybersecurity threats and safeguard HIPAA protected health information
 - Align state and federal privacy regulations

Generative Artificial Intelligence

Health and Welfare Plans and Gen AI

- Generative AI may offer tools to promote efficiencies and reduce costs in health care
- Cases against insurance companies for using genAI tools in claims determination

Reasonableness of Compensation and Fees

Health and Welfare Plans Vendor Compensation and Fees

- Exercising the fiduciary duty of prudence and loyalty means compensation and fees must be reasonable
- New ERISA health and welfare plan fee disclosure requirements may increase litigation
- **Reminder:** Fiduciaries do not have to choose cheapest option

Actionable Guidance

1. Continue to engage in robust discussions on issues such as enhancing program sustainability, GHIP participant health, and vendor management (RFPs, data privacy and security requirements, etc.).
2. Receive regular updates from ETF on the group insurance programs, legal issues and ETF practices.
3. Document the path to making decisions and the reasons for decisions.



Questions?

Thank you



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