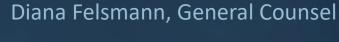
Group Insurance Board Fiduciary Updates: Health and Welfare Plans in Focus

Item 4 – Group Insurance Board



Office of Legal Services



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



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





Health and Welfare Plans and Gen Al

- Generative AI may offer tools to promote efficiencies and reduce costs in health care
- Cases against insurance companies for using genAl 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. <u>Continue to engage in robust discussions</u> 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. <u>Document</u> the path to making decisions and the reasons for decisions.

Questions?

Thank you











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