ERISA fiduciary success

ERISA imposes heightened requirements on fiduciaries over individuals such as administrators, HR professionals and others who may work with the plan.

Fiduciaries have duties of prudence, diligence and loyalty to the plan.

ERISA fiduciary success diagram

Prudence, diligence, and loyalty

The duty of prudence examines the decision-making process of fiduciary decisions. It requires a fiduciary to have expertise in relevant areas when making fiduciary decisions, such as investment decisions or choosing service providers. If a fiduciary does not have that expertise, the fiduciary needs to hire someone who does. The duty of diligence to the plan means that the fiduciary needs to follow the terms of the plan or follow ERISA requirements if they conflict with plan terms. The duty of loyalty requires plan fiduciaries to operate the plan solely in the interest of the plan participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses.

In addition to the four steps outlined below, employers can also consider purchasing an ERISA fidelity bond (which protects the plan from losses due to fraud or dishonesty) and fiduciary liability insurance (which protects the plan from losses due to breaches of a fiduciary).

We have identified four critical steps to success as an ERISA plan fiduciary:

1.

Annual Audit

A comprehensive audit should cover numerous requirements under ERISA, ACA, HIPAA, and the CAA. Ensure that plans are properly documented and administered by covering requirements. The audit can help determine if plans need to take additional steps, including non-discrimination testing, plan document cleanup or dependent audits to ensure continued compliance.

2.

PBM Contracts

PBM contracts contain terms, conditions and definitions that allow the PBM to meet its contractual guarantees while increasing what the plan sponsor is paying by diminishing the value of the pricing and rebate guarantees. Doing so creates pricing and rebate guarantee “optics”. Identifying these in a PBM contract allows the plan sponsor to negotiate them out of the contract and eliminates the “leakage” that is costing the plan sponsor money. If the PBM refuses to change or eliminate these terms, conditions and definitions, the plan sponsor can then go to market with an RFP and choose a PBM that will include the requested business and contract requirements in the contract. Similarly, a contract audit performs two valuable functions:

1. verification that the contractual “promises” have been met and
2. identification to recover plan dollars when contractual promises.

In addition, a small number of auditors add value to their auditing by identifying the contractual terms, conditions and definitions that are in a PBM contract that “defeated” potential audit recoveries.

3.

TPA and Carrier Contract Review

An employer's legal counsel can review carrier and TPA contracts to ensure compliance with regulations as well as that best practices are being followed. Legal review can also identify conflicting terms between contracts and plan documents that could cause issues with plan participants and claims.

4.

Population Health Management

Utilizing population health management allows a fiduciary to make data driven decisions. Flag potential high cost claimants to allow for appropriate condition management, claims paid outside of normal values can be flagged for additional conversations with providers and TPAs, and fiduciaries can seek refunds as appropriate, ensuring plan dollars are spent properly and in accordance with plan terms and contracts. Allows for objectivity in decision making, formulary decisions, vendors and more.