



BALDWIN REGULATORY COMPLIANCE COLLABORATIVE

Guidance for Establishing a Health & Welfare Plan Fiduciary Committee

PLAN OPERATIONS CENTRAL

Guidance for Establishing a Health & Welfare Plan Fiduciary Committee

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Part One: Introduction

Respecting the ever-increasing liabilities assumed by plan sponsors and plan-level fiduciaries, enhanced regulatory scrutiny and agency enforcement protocols, as well as the frequency and ferocity of recent judicial interventions in the realm of fiduciary governance, it is more crucial than ever for employers sponsoring group health and welfare plans and programs to implement an organizational Health and Welfare Plan Fiduciary Committee.

This introductory guide outlines the basic structure, committee responsibilities, and organizational procedures underlying the creation and operation of a fiduciary committee in alignment with best practices to manage risk effectively while assuring legal and regulatory compliance.

– PRACTICE TIP –

Leverage the business's existing claims and/or H&W liabilities when proposing or adopting a Health & Welfare Plan Fiduciary Committee. Connect with TPA or carrier to obtain this information. Rely on counsel for additional research and/or support of case law/major litigation claims related to your findings to assist with the proposal or formation of a committee.

Part Two: Purpose of the Fiduciary Committee

The Health and Welfare Plan Fiduciary Committee will be responsible for overseeing the administration and governance of the company's health and welfare plans, programs, and related employee benefit offerings.

The committee's primary objective is to ensure that plan operations adhere to fiduciary standards and the fiduciary code of conduct, as required by the Employee Retirement Income Security Act ("ERISA") and its underlying Federal regulations.

– PRACTICE TIP –

Partnering with experienced and knowledgeable legal counsel (internally or externally engaged) is critical at this stage. In partnership with counsel, the committee should establish a “charter.” This will serve as a guide for determining committee authorities, activities, responsibilities, and oversight. It will also be an opportunity to clearly define the scope of purview for the committee, as well as to define the composition, appointment, and tenure of committee members.

Part Three: Operational Goals of the Committee

A primary responsibility of the governing organization is the establishment of the operational goals of the Fiduciary Committee. This is an important exercise because the scope of authorities and responsibilities charged to committee members will be a primary factor in the recruitment and retention of the committee’s membership. Further, a clearly and plainly articulated statement of purpose for the committee will help to ensure the committee is designed and operated for the sole and exclusive purpose of providing benefit to the plan participants and their eligible beneficiaries, as mandated by ERISA’s governing fiduciary obligations.

In addition, take heed of the following considerations when defining and articulating the committee’s operational goals:

1. **Compliance Assuredness**: Ensure compliance with ERISA fiduciary duties and the Fiduciary’s Code of Conduct, as well as other relevant and/or applicable laws, regulations, and Federal agency guidance.
2. **Risk Mitigation**: Purposefully and appropriately seek to mitigate legal liabilities and financial risks to health and welfare plans and programs via contemplation and memorializing clearly articulated and reasonably attainable committee goals.
3. **Prudent Governance**: In developing the committee’s goals, remember that ERISA requires that plan-level fiduciaries act prudently, respecting their plan oversight responsibilities. This includes adherence to the Exclusive Purpose and the Plan Document Rules under ERISA (*the former requiring plan fiduciaries to act solely in the interest of the plan’s participants and their beneficiaries, and the latter requiring that all plans and programs be administered in accordance with the written plan documents governing each plan or program*).
4. **Governing Instruments**: As the sponsoring organization, the committee’s statement of goals, as well as a clearly articulated statement of policy for the committee, serve as essential governing instruments for the operations of the committee. The statement of

goals should incorporate clear and detailed instructions directing the committee on matters related to both accountability and oversight.

– PRACTICE TIP –

Articulate clearly defined and reasonably attainable governing committee goals and performance standards. Note that committee goals and standards should properly align with ERISA's Fiduciary Duties and the fiduciary's Code of Conduct. At times, the larger organization's goals may not perfectly align with the committee's goals, which are both reasonable and expected.

Part Four: Committee Structure

Generally, a Health and Welfare Plan Fiduciary Committee is comprised of specific delegated roles and responsibilities, though the exact composition of an individual organization's specific committee will be largely dependent upon several factors, such as:

- **Scope of Governance:** Health and welfare plans and programs governed by the committee (*consider also whether the committee will have authority respecting other benefit issues, such as executive compensation matters, retirement plans, ancillary benefit, etc.*).
- **Committee Composition and Size:** The overall size of the committee, as well as role-specific functions and responsibilities.
- **Appointment Tenure:** Tenure of committee appointments.
- **Goals & Responsibilities:** A comprehensive inventory of the overarching committee goals, standards, and role specific responsibilities.
- **Delegations of Authority:** Written records and other archives respecting carrier, issuer, administrator, vendor, and engaged broker delegations of fiduciary liability and outlines of associated capabilities respecting the management of certain fiduciary functions.

Notwithstanding the foregoing considerations, certain roles and responsibilities are always essential in committee development and formation, including:

1. **Committee Chair:** Senior HR executive or benefits manager.
2. **Voting Committee Members:** Representatives from the HR, finance, and legal departments.
3. **Committee Advisors (non-voting):** External consultants, legal counsel, and auditors as needed.

4. **Secretary**: Documents and maintains archives of the activities and votes of the operation committee.

Finally, remember that a committee should always have an odd number of members; this operates to avoid the occurrence of a tied vote. Also, in the event of a voting tie or irreconcilable opinions, the Committee Chair should always be authorized to submit tie-breaking votes and to redirect and/or table substantive discussion of any topic.

– PRACTICE TIP –

Include person(s) knowledgeable of business financials who possess a deep knowledge and understanding of the company's benefits offerings. Be careful to avoid packing the committee with executives and/or C-suite partners. Instead, the committee should be comprised of management, benefit professionals, at least one employee representative, and a management representative. For voting purposes, you should aim to have a quorum, simply a threshold for making decisions. Generally, having an odd number of committee members to account for tiebreaks and/or recusals is also helpful.

Part Five: Roles and Responsibilities

Committee roles and responsibilities also vary greatly depending upon individual and organizational preferences and the scopes of responsibilities and authorities granted to the committee; however, specific elemental roles and responsibilities are common to all fiduciary committees. These include items such as the following:

- **Plan Oversight**: Standards related to monitoring plan-level administration of health and welfare plans and programs to the satisfaction of ERISA and the plan sponsor's authority as the plan settler of the plan or program.
- **Legal and Regulatory Compliance**: All fiduciary committees should be delegated the authority and responsibility for legal and regulatory compliance assuredness. This extends beyond ERISA's mandates and requirements to other relevant laws and regulations, such as HIPAA, MHPAEA, the ACA, and others.
- **Adherence with ERISA Fiduciary Duties**: Plan fiduciaries must act with prudence and in the best interests of the plan participants and beneficiaries. Fiduciaries are also charged to offset reasonable plan administration expenses and follow the terms of the underlying written plan documents.
- **Vendor Selection and Management**: The committee should be responsible for monitoring vendors and service providers, including negotiation, design, and drafting of

agreements and service contracts by and between service providers (including carriers, issuers, third-party administrators, vendors, and other third-party solution providers).

- **Design, Adoption, and Maintenance of Participant Disclosures.** The committee should oversee the production, dissemination, and maintenance of all required and supplemental participant disclosures, including plan documents, summary plan descriptions, material modifications, reduction summaries, plan amendments, Form 55500 filings, summary annual reports, summaries of benefits and coverage, and the like.
- **Scheduling and Attending Required Meetings and Conferences:** The committee should hold quarterly, monthly, or semi-monthly advisory meetings, as well as issue or topic sensitive as hoc meetings as necessary to address non-routine or emergency matters. All meetings should be memorialized in writing (e.g., *meeting minutes*), with accountings of such archived for a period of seven years.
- **Claims & Appeals:** The committee should be designated as the appropriate adjudication body for the resolution of administrative and operational appeals and enrollee exceptions. This designation of authority should be memorialized in all underlying written participant disclosures, and such disclosures should be designed in an ERISA complaint manner, reserving for the plan fiduciaries the authority to provide final adjudication and/or final appeals in the instance of exceptions. Also, the committee should draft and adopt reasonable policies and procedures governing the resolution of all plan-level administrative exceptions.¹

– PRACTICE TIP –

Partner with in-house and/or external counsel for purposes of supporting the design and production of a committee charter (a governing instrument dictating the roles and responsibilities of the committee). The committee charter will serve the important dual responsibilities of offering legal support for the activities of the committee, as well as providing a framework to support the performance of the committee's roles and responsibilities.

¹ Administrative exceptions and claims/appeals are distinguished by the fact that exceptions arise where the plan makes a fiduciary or settlor determination to permit or deny a claim or appeal on non-medical grounds, such as a change of organizational policy or administration, grandfathering of eligibility, one-off coverage or benefit exceptions, etc. However, adjudication of initial and final claims/appeal on medical grounds are generally made by carriers, issuers, third-party administrators, and other engaged third parties.

Part Six: Fiduciary Best Practices

Design the committee charter in a reasonable and concise manner to provide for accurate and timely performance of required legal, regulatory, and governance related governance activities, such as:

1. **Training:** Provide ongoing fiduciary training for committee members to stay informed, respecting the current and evolving states of laws and regulations governing the committee standards of governance and performance.
2. **Documentation:** Ensure that all committee activities are properly recorded in a written record of committee actions and activities, including meeting minutes, voting activities, appeals adjudications, and committee appointment and removal activities.
3. **Conflict of Interest Policy:** Implement and enforce policies to identify and mitigate potential conflicts of interest (*e.g., committee member recusal should they be privy to proprietary information concerning a particular matter or have an established relationship with a participant whose matter is before the committee*).
4. **Monitoring, Oversight, and Auditing Functions:** Conduct regular internal audits and seek independent assessments as needed to verify plan operations, including governance related and general plan administration guidance.

– PRACTICE TIP –

All committee members should be required to undergo both introductory and annual refresher fiduciary education and training at a minimum. Furthermore, to ensure compliance with confidentiality requirements, committee members should receive introductory and annual refresher training respective to the requirements of the Health Insurance Portability and Accountability Act's ("HIPAA's") Privacy and Security standards so that all claims presented to the committee are handled in a private and secure manner, including removal of individual identifiers, as appropriate and/or necessary.

Part Seven: Risk Mitigation Strategies

One of the committee's primary objectives is mitigating risk related activities and outcomes. Risk mitigation strategies involve both internal and external reviews, audits, and corrective measures. Some common risk mitigation related activities a committee may be charged to conduct include each of the following activities:

- **Compliance Reviews and Audits:** Conduct annual reviews of plan governance and administrative operations to ensure adherence to regulatory requirements and ongoing modifications of law, regulation, and organizational governance.
- **Committee Insurance & Bonding:** Securing fiduciary liability insurance and/or appropriate fiduciary bonds to protect committee members and organizational leadership against the effects and outcomes arising from successful allegations of nonfeasance and/or inadvertent mistake and the like. Remember that fiduciary liability insurance and fiduciary bonds do not generally compensate an organization in the event of a fiduciary's malfeasance in the performance of professional duties, so the education of the committee should always be a central tenant of the legal functioning of the committee.
- **Participant Communications:** The committee should be charged to assure the timely, accurate, and transparent communication of plan-level benefits, rights, and features to plan participants and their enrolled beneficiaries, including, without limitation, plan-level adoptions, amendments, reductions, and terminations of plans and benefits (*e.g., plan amendments, SMMs, SMRs, terminations, adverse benefit determinations, adverse appeals activities, provider communications and production requests, other benefit related adjudications, etc.,*).
- **Service Provider Engagements:** The committee may review and engage independent review organizations ("IROs") for external review and adjudication of claims and appeals (*generally speaking, excluding final appeal determinations, committee members should refrain from making decisions regarding benefit claims and appeals based on medical determinations, such as necessity. Instead, they should collaborate with third-party administrators ("TPAs"), carriers, issuers, and other engaged professional service providers to ensure the initial and final appeal processes are followed*). If necessary, the committee may seek to engage the services and expertise of an Independent Review Organization (IRO) for purposes of adjudication of second/final-level appeals.

– PRACTICE TIP –

Define risk mitigation strategies and related requirements within the scope of the committee charter (generally speaking, incorporated by reference to attachments or exhibits drafted to amend or supplement the charter instrument). In most instances, the committee should refrain from risk mitigation activities that involve adjudicating claims and appeals based on medical standards or assessments. Instead, the committee's purview of risk mitigation should be limited to governance matters and general oversight of plan-level practices and organizational administration.

Part Eight: Implementation Plan

The charter and the committee's related governing policies and procedures should outline the development and design of the organization's committee implementation plan. The implementation plan is generally initiated through drafting and adopting a written action of the board of directors. At a minimum, the implementation plan should detail the following elements:

- **Action of the Board of Directors:** An action of the board of directors is the preferred implementation mechanism for a fiduciary committee. This document infers necessary authorities to the committee, as required for governance of the organization's employee benefit plans.
- **Identification of Initial Committee Composition:** The implementation plan should identify, by name and by title, the initial composition of the committee; thereafter, committee changes should be handled in accordance with the provisions of the committee's written charter.
- **Initial Meeting:** The implementation plan should designate the date, time, and location of the committee's inaugural meeting; thereafter, committee meetings should be scheduled/dictated in accordance with the provisions of the committee's written charter.
- **Member Orientation and Initial Training:** The implementation plan should account for the orientation of initial committee members and detailed requirements related to their initial training, whether by internal or external resources or engaged independent solution providers.
- **Operational Launch:** The implementation plan should detail a launch date for the committee's oversight obligations, including activation of the committee charter.

– PRACTICE TIP –

Generally, organizations are encouraged to provide as much detail as possible respecting both the implementation plan and the committee's governing charter to appropriately apprise the committee members of the scope of committee appointments (e.g., estimated time commitments, compensation for service, liability for nonfeasance or malfeasance, detail of requirements related to initial and on-going training requirements, etc.). Organizations may provide it helpful and/or useful to forecast estimated timelines and associated costs and fees within the terms of a detailed (and oftentimes phased) project implementation plan.

Part Nine: Evaluation and Continuous Improvement

The committee should be charged with the performance of periodic and/or annual performance reviews and analyses. This is accomplished through the design, drafting, and adoption of operational policies and procedures governing the anticipated and expected activities of the committee. This includes policies and procedures related to the review of committee performance, including opportunities for service enhancements and/or improvement of governance activities. Annual reports summarizing the committee's activities, findings, and recommendations should be presented to the executive and key leadership no less frequently than on an annual basis.

– PRACTICE TIP –

Invite carriers, issuers, third-party administrators, external vendors, and other engaged solution providers to committee meetings for purposes of providing the committee with operational and administrative updates, as well as for purposes of detailing trends related to enrollment, plan utilization, reviews of high-dollar or excessive claims, and required, recommended, or otherwise necessary plan-level modifications, amendments, adoptions, and/or terminations. The committee may also want to request detailed reports before such meetings to provide the committee members with an advanced opportunity to review findings and recommendations prior to its in-person meetings and administrative conferences.

Part Ten: Approvals

Health & Welfare Plan Fiduciary Committees require the endorsement of senior leadership and relevant key stakeholders. Consequently, upon contemplation of the implementation of the committee, senior executives and key leadership should also be provided with adequate orientation and reasonable fiduciary education so that organizational decision-makers understand the necessity for the committee, as well as the scope of authorities and responsibilities conferred upon the committee.

Part Eleven: Summary & Conclusion

Establishing a Health and Welfare Plan Fiduciary Committee demonstrates an organization's commitment to regulatory compliance, risk management, and protecting plan participants and beneficiaries. However, absent adequate planning, improper conference of responsibilities and authorities, and reasonable oversight mechanisms, a committee may cause more harm than

good. For these and other reasons, it is imperative that the committee operate in accordance with an appropriate implementation plan and committee charter.

Furthermore, note that federal and state-level courts have been shown to demonstrate significant deference to the determinations of these types of governing committees upon the evaluation of and the balancing of equities arising in the adjudication of employee benefit-related claim disputes. To that end, a well-designed, properly trained, and successfully oriented fiduciary committee has the potential to ensure an organization's successful administration of employee benefit-related obligations, respecting both regulatory obligations and overall participant satisfaction.

Through diligent and scope-appropriate implementation of an employee benefits fiduciary committee, a sponsoring organization may circumvent inherent risks and unnecessary liabilities while enhancing the benefit-related options and outcomes for participating employees and their enrolled dependents and beneficiaries.

Part Twelve: Topical Resources

The following topical federal agency resources and instructive materials may prove useful to organizations evaluating or implementing an employee benefit fiduciary committee:

- [Fiduciary Responsibilities | U.S. Department of Labor](#)
- [Plan Administration and Compliance | U.S. Department of Labor](#)
- [Fulfilling Your Fiduciary Responsibilities](#)
- [Meeting Your Fiduciary Responsibilities | U.S. Department of Labor](#)
- [Employee Benefits Security Administration | U.S. Department of Labor](#)
- [A plan sponsor's responsibilities | Internal Revenue Service](#)
- [Have you had your retirement plan checkup this year? | Internal Revenue Service](#)
- [Correcting plan errors | Internal Revenue Service](#)
- [Tax consequences of plan disqualification | Internal Revenue Service](#)
- [Employee benefits | Internal Revenue Service](#)
- [Retirement plan fiduciary responsibilities | Internal Revenue Service](#)

For additional information or to obtain access to the Baldwin Group's range of advisory solutions and support capabilities related to ERISA fiduciary status and the related fiduciary and settlor obligations, including adoption, oversight, and administration of a Health and Welfare Fiduciary Committee, please contact the Baldwin Group.

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