

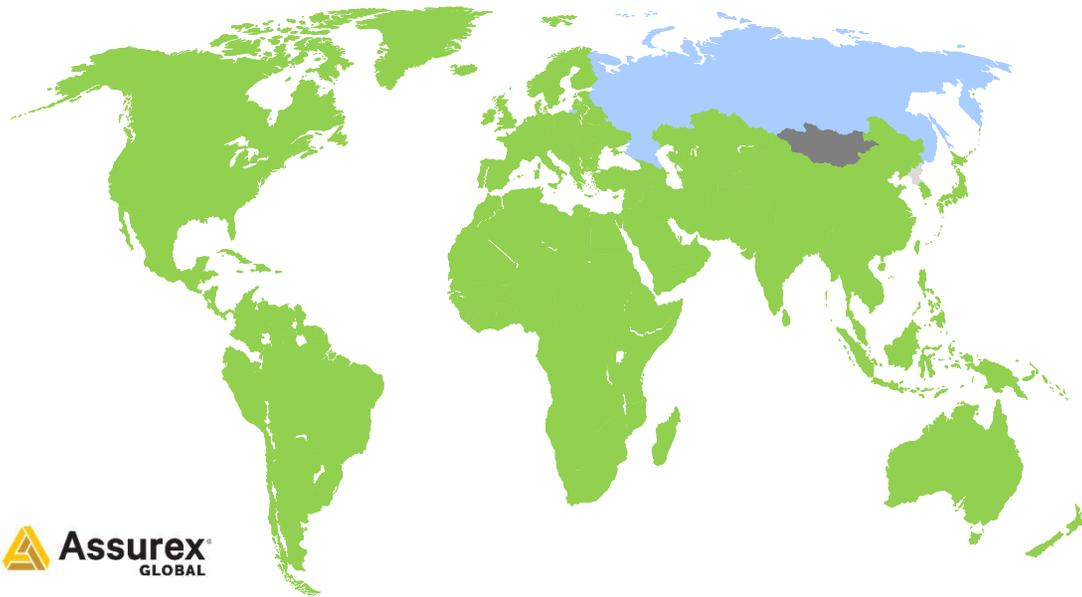
# ERISA Fiduciary Duties

Presented by Lumelight  
**February 2026**



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# AGENDA

Fiduciary Litigation

ERISA Fiduciary Roles & Responsibilities

Handling Plan Assets

Plan Compliance & Auditing

Vendor Management

Common Fiduciary Struggles

Managing Fiduciary Risk



# Fiduciary Litigation

# Fiduciary Litigation

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During 2024-2025, there was a wave of litigation targeting major employers including Johnson & Johnson, Wells Fargo, and JPMorgan Chase focusing on pharmacy benefit manager oversight and related fiduciary responsibilities

## **Primary Allegations**

- Imprudent selection and monitoring of pharmacy benefit managers
- Inadequate oversight of drug pricing and rebates
- Failure to monitor administrative fees and formulary design
- Undisclosed or poorly managed conflicts of interest

## **Case Outcomes**

- Most cases have been dismissed by courts for lack of standing or failure to demonstrate actual harm
- However, dismissal does not eliminate the reputational risk or substantial legal costs associated with defending these claims

## Fiduciary Litigation

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A new flavor of ERISA litigation has emerged with four separate lawsuits filed in early 2026 targeting voluntary benefit arrangements (e.g., critical illness, hospital indemnity) and pulling in consultants/brokers as parties in interest

### **Allegations:**

- Failure to prudently select and monitor service providers
- Failure to monitor, control, or leverage plan bargaining power to limit broker and consultant compensation
- Knowing participation in prohibited transactions

# Voluntary Benefits – ERISA???

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## ERISA Exemption (Safe Harbor) Requirements

- No employer contributions
- Participation must be voluntary
- Employer involvement must be very limited; only permitted to publicize the benefits and collect after-tax employee contributions

### **No Employer Endorsement Permitted**

The following might be considered endorsement:

- selection of the insurance company or the coverage
- use of the employer's name or logo on benefit material
- designating the employer as plan administrator, sponsor, or trustee
- recommending the plan to employees
- paying premiums through a cafeteria plan
- assisting employees with claims and disputes

# Fiduciary Litigation Takeaways

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- Understand which plans are subject to ERISA
- Understand the employer's fiduciary role and responsibilities and implement appropriate processes and documentation practices



# ERISA Fiduciary Roles & Responsibilities

# Fiduciary Status

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Fiduciaries are those who (i) exercise discretionary authority or control over administration of the plan or management of plan assets; or (ii) render investment advice for compensation

## **Named Fiduciary**

Individual name or position, or sometimes a committee of people, specifically named in documentation or contracts

## **Functional Fiduciary**

Not specifically named, but acting as a fiduciary



**Employer plan sponsor is ALWAYS a fiduciary by default**

# Fiduciary Duty vs. Business Administration

## Fiduciary Decisions

- ▶ Appointing other plan fiduciaries
- ▶ Selecting and monitoring plan vendors
- ▶ Assessing plan compliance
- ▶ Denying or approving claims
- ▶ Disclose potential conflicts of interest

## Business Decisions

- ▶ Establishing a plan
- ▶ Determining a benefit package
- ▶ Deciding which employees are eligible
- ▶ Amending a plan
- ▶ Terminating a plan

# Fiduciary Duties & Obligations

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## ERISA §404(a) Duties

**Duty of Care**

**Duty of Skill**

**Duty of Loyalty**

**Duty of Prudence**

## Fiduciary Obligations

- Informed decision-making
- Avoid conflicts of interest
- Ensure legal compliance

**Act in the best interest of plan participants**

# ERISA Requirements

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Act solely in the **best interest of participants**



Use a **prudent**, well-informed process for all decisions



Follow **plan documents**



**Select** and **monitor** service providers (TPAs, brokers, PBMs, etc.)



Ensure fees and compensation are **reasonable**



Provide **accurate, timely** communications to participants



**Document** decisions, reviews, and corrections (audit trail)



# Handling Plan Assets

# Plan Assets

A plan asset is money that belongs to plan participants

- Participant contributions
- Insurance dividends, refunds and rebates
- Employer funds held in a trust

Must be used solely to benefit plan participants:

- Administration expenses
- Broker, TPA, PBM fees
- Compliance costs
- Claim payments
- Insurance premiums



Participant contributions must be forwarded/deposited as soon as administratively feasible, typically within 2-3 business days of withholding, but for sure within 90 days

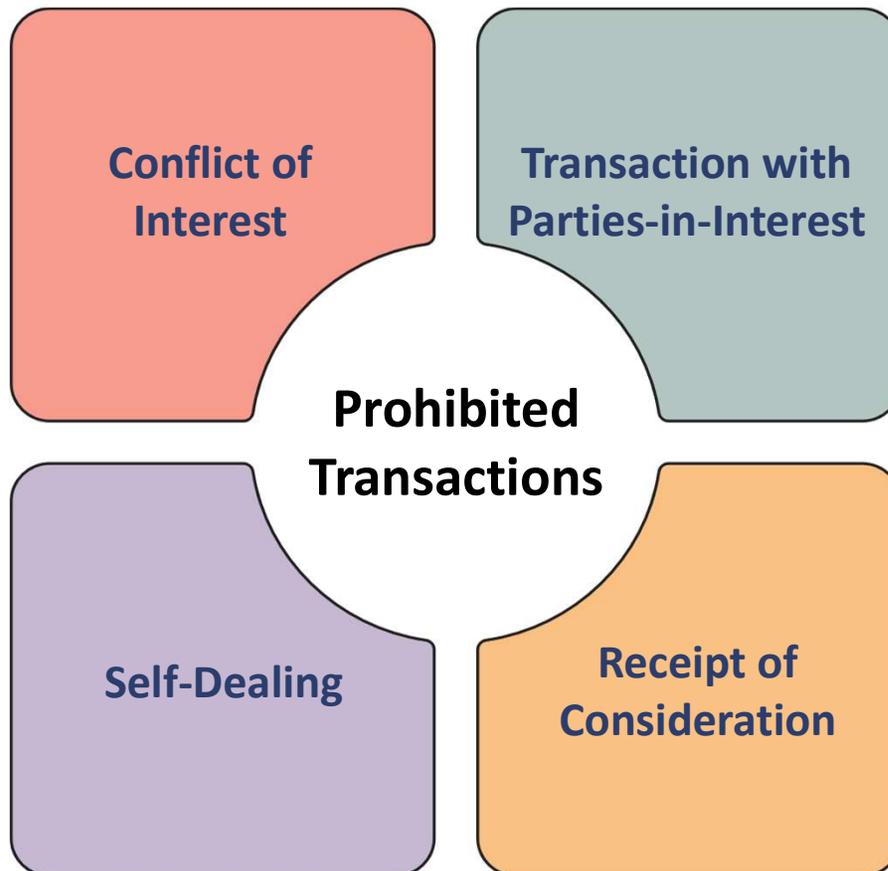
## Funded vs. Unfunded

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- **Funded** = All employee and employer contributions held in a segregated account or trust (e.g., VEBA)
  - All funds are plan assets, requiring that all funds be used solely to benefit plan participants (e.g., used to pay plan administrative expenses, increase coverage available via the plan, decrease participant contributions, etc.)
- **Unfunded** = Plan is funded from the employer's general assets
  - More flexibility for the employer to use budgeted amounts that aren't needed for the plan toward any other business expenses

# Prohibited Transactions

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# Plan Compliance & Auditing

# Plan Documentation

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- ✔ **Designation of named fiduciary**
- ✔ **Benefits and eligibility**
- ✔ **Description of funding**
- ✔ **Procedures for allocating plan responsibilities**
- ✔ **Plan amendment and termination procedures**
- ✔ **Required notices – e.g., ERISA, COBRA, HIPAA**

## Eligibility & Claims Audits

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Regular audits of plan eligibility and claims processing help identify errors, prevent fraud, ensure compliance with plan terms, and protect plan assets

### Eligibility Audits

Verify that only eligible individuals are covered and that enrollments, terminations, and status changes are processed accurately and timely

### Claims Audits

Review a sample of paid claims to ensure they comply with plan terms, coding accuracy, appropriate application of cost-sharing, and correct coordination of benefits

# Annual Compliance Calendar

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- ✓ **Plan document review and amendments**
- ✓ **Notice distributions**
- ✓ **Reporting – e.g., ACA employer reporting, creditable coverage, Form 5500, RxDC, gag clause attestations**
- ✓ **Compliance assessments**

## Compliance & Vendors

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Many compliance obligations cannot be handled by the employer alone...

MHPAEA

Gag Clause Attestations

RxDC Reporting

NQTL Comparative Analysis

Price Comparison Tools

Machine-Readable Files

No Surprises Act



# Vendor Management

## Plan Vendors

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- Third-party administrators
- Pharmacy benefit managers
- Insurance carriers
- Benefits consultants
- Wellness program providers
- Health savings account providers



# Assessing Vendors

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- ✓ Customer service
- ✓ Technology and innovation
- ✓ Services offered
- ✓ Regulatory compliance
- ✓ Cost (only reasonable and necessary fees)
- ✓ Reputation
- ✓ Experience
- ✓ Contractual language (e.g., indemnification)

# Vendor Monitoring

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**Establish  
Performance  
Metrics**



**Conduct  
Performance  
Reviews**



**Correct  
Performance  
Issues**

## Compensation Disclosures

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Brokers/consultants, PBMs, TPAs and other service providers expecting to receive at least \$1,000 in compensation must provide disclosures “reasonably in advance” of contracting

- Must describe services to be provided, whether the service provider expects to be a plan fiduciary, and all forms of direct and indirect compensation

Plan fiduciaries must obtain these disclosures, evaluate whether compensation is reasonable, document their assessment, and monitor compliance on an ongoing basis



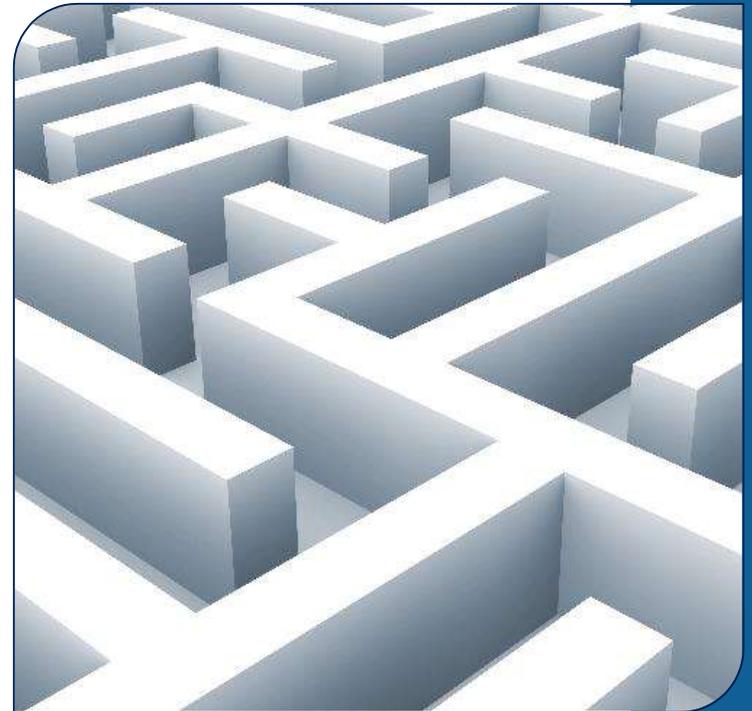
## Common Fiduciary Struggles

# Fiduciary Pain Points

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## Navigating the Compliance Maze

- Complexity of Responsibilities
- Oversight and Monitoring
- Conducting Audits and Facilitating Disclosures



## Risk Scenarios

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- Fragmented system of documentation and lack of evidence showing ongoing governance
- Failure to distribute required notices
- Committee as a placeholder, but inactive
- No evidence of vendor comparison prior to selection; lack of ongoing monitoring
- Failure to collect or review compensation disclosures
- Outdated plan documents or mismatch of documentation and actual administration

## Real-World Consequences

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Audits



Litigation



Brand and reputational harm



Financial exposure



Employee trust



## Managing Fiduciary Risk

# Fiduciary Checklist

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|   |   |
|---|---|
| <b>Governance &amp; Oversight</b>       | <ul style="list-style-type: none"><li>• Create a benefits committee that meets regularly</li><li>• Clarify roles and responsibilities</li></ul>   |
| <b>Documentation</b>                    | <ul style="list-style-type: none"><li>• Maintain written records of committee meetings, vendor evaluations, compliance reviews, and key fiduciary decisions</li></ul>   |
| <b>Compliance &amp; Risk Management</b> | <ul style="list-style-type: none"><li>• Perform regular compliance assessments (e.g., ERISA, COBRA, HIPAA, ACA, etc.)</li><li>• Audit plan eligibility and claims</li><li>• Consider purchasing fiduciary liability insurance</li></ul> |

# Fiduciary Checklist

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|  |  |
|--|--|
| <b>Vendor Selection &amp; Monitoring</b> | <ul style="list-style-type: none"><li>• Improve selection and monitoring</li><li>• Review vendor contracts</li><li>• Clarify fiduciary status</li><li>• Increase transparency around compensation</li><li>• Avoid self-dealing</li></ul>   |
| <b>Handling Plan Assets</b>              | <ul style="list-style-type: none"><li>• Ensure only reasonable and necessary fees are paid for administration and vendor services</li><li>• Ensure participant contributions are appropriately collected, timely handled, and used solely for the benefit of plan participants</li></ul> |

# Benefits of Proper Fiduciary Governance

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- Builds a defensible decision-making process
- Reduces surprises and cost volatility
- Strengthens participant trust
- Prevents compliance gaps before they escalate to audits or penalties
- Creates operational continuity



# Questions

# Webinar Wrap-Up

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A link to the recording of today's session will be available early next week from the Assurex Global Partner Firm who invited you to today's event.



## Assurex Global in Numbers



30k+  
Employees



100+  
Partner Firms



\$47B  
Annual  
Premium



\$5B  
Annual  
Revenue



730+  
Partner  
Offices



175  
Countries