



HYLANT



Understanding Your Fiduciary Responsibilities

Practical Strategies to Protect Your Plan



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March 20, 2025

10:00-11:00 a.m. ET

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Agenda

- 1 Overview of ERISA
- 2 Fiduciary Responsibilities
- 3 Transparency Requirements
- 4 Recent Lawsuits
- 5 Employer Takeaways





Overview of ERISA

Overview of ERISA



Government employers and church plans are exempt from ERISA.

- Employee Retirement Income Security Act of 1974
- Sets minimum standards for employee benefit plans provided by private employers to protect employees
 - Retirement plans – 401(k), 403(b), etc.
 - Welfare plans – medical, dental, life, etc.
- Title I — Protection of Employee Benefit Rights
 - Part 1: Reporting and Disclosure
 - Part 2: Participation and Vesting
 - Part 3: Funding
 - **Part 4: Fiduciary Responsibility**
 - Part 5: Administration and Enforcement
 - Part 6: COBRA Continuation Coverage and Additional Standards for Group Health Plans
 - Part 7: Group Health Requirements (HIPAA, ACA, recent transparency additions, etc.)

Important ERISA Definitions

- **Plan**
 - Separate entity
 - Subject to ERISA requirements
 - Can sue and be sued
- **Plan Sponsor**
 - Creates and maintains the plan
 - For single employer plans, the employer is the plan sponsor
- **Plan Administrator**
 - Not the same as a TPA
 - For single employer plans, the employer is the default plan administrator
 - *However, other options exist, e.g., naming an individual or a committee*
 - Directly responsible for ERISA compliance



Fiduciary Responsibilities

Who is a fiduciary?



Fiduciary status is based on the functions performed for the plan, not just a person's title.

- ERISA requires health plans to designate a “named fiduciary” to assume certain responsibilities relating to administration of the plan
- **The plan administrator is typically the named fiduciary**
- While the named fiduciary has the ultimate responsibility, individuals or entities may also act as fiduciaries
 - Exercising discretionary authority or control regarding management of the plan
 - Having discretionary authority or responsibility in administration of the plan
 - Exercising any authority or control over management or disposition of plan assets

What are a fiduciary's responsibilities?



A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries.

- **Exclusive benefit rule**
 - Operate for the exclusive purpose of providing plan benefits or paying reasonable expenses of plan administration
- **Duty of prudence**
 - Act with the care, skill, prudence and diligence that a prudent person in similar circumstances would use
 - *Fiduciary should either have expertise to manage plan or hire someone who does*
 - *Fiduciary should monitor delegates*
- **Duty to diversify**
 - Fiduciary must diversify a plan's investments to minimize risk of large losses (retirement plans only)
- **Duty to follow plan documents**

Fiduciary Duties

Additional Considerations

SETTLOR FUNCTIONS

- Fiduciary duties do not apply
- Includes business decisions such as amending and terminating plans
- Individuals can serve in dual capacities, but not at the same time

DELEGATING FIDUCIARY DUTIES

- Duties can be delegated to others if permitted by the plan
- Named fiduciary retains ultimate responsibility

FIDUCIARY BREACHES

- Personal liability for damages or profits
- Special fiduciary penalties assessed by DOL
- Removal
- Criminal penalties

A group of people's hands holding a pen over a document, symbolizing collaboration and transparency. The image is overlaid with a dark blue semi-transparent filter.

Transparency Requirements

Recent Transparency Laws, Requirements

- Affordable Care Act: Transparency in Coverage
 - Public posting of machine-readable files (2022)
 - Self-service price comparison tool (2023 and 2024)
- Consolidated Appropriations Act: Transparency
 - Removal of gag clauses (2020)
 - Annual attestation on non-existence of gag clauses (2023)
 - Disclosure of compensation from brokers and consultants (2022)
 - Mental health parity comparative analyses on non-quantitative treatment limitations (NQTLs) (2021)
 - Annual reporting on prescription drug and health care spending (RxDC) (2022)
- Consolidated Appropriations Act: No Surprises Act
 - Definition of covered emergency services (2022)
 - Calculation of certain non-network payments and cost share (2022)
 - Notice to participants regarding surprise billing protections (2022)
 - Federal independent dispute resolution (IDR) for certain non-network payments (2022)
 - ID card content (2022)
 - Network directory accuracy requirements (2022)
 - Continuity of care protections (2022)
 - Advance cost estimate and advance EOB (delayed pending guidance)
 - Online price comparison tool (2023 and 2024)
 - Reporting on air ambulance claims (delayed pending guidance)

Four Key Transparency Provisions



Fee Disclosures

Brokers / consultants must disclose direct and indirect compensation at renewal (or upon entering into initial agreement).



Price Comparison Tool

Health plans must create an online tool for participants to estimate out-of-pocket costs before receiving health services.



Machine-Readable Files

Health plans and hospitals must make publicly available data on network and non-network reimbursement rates.

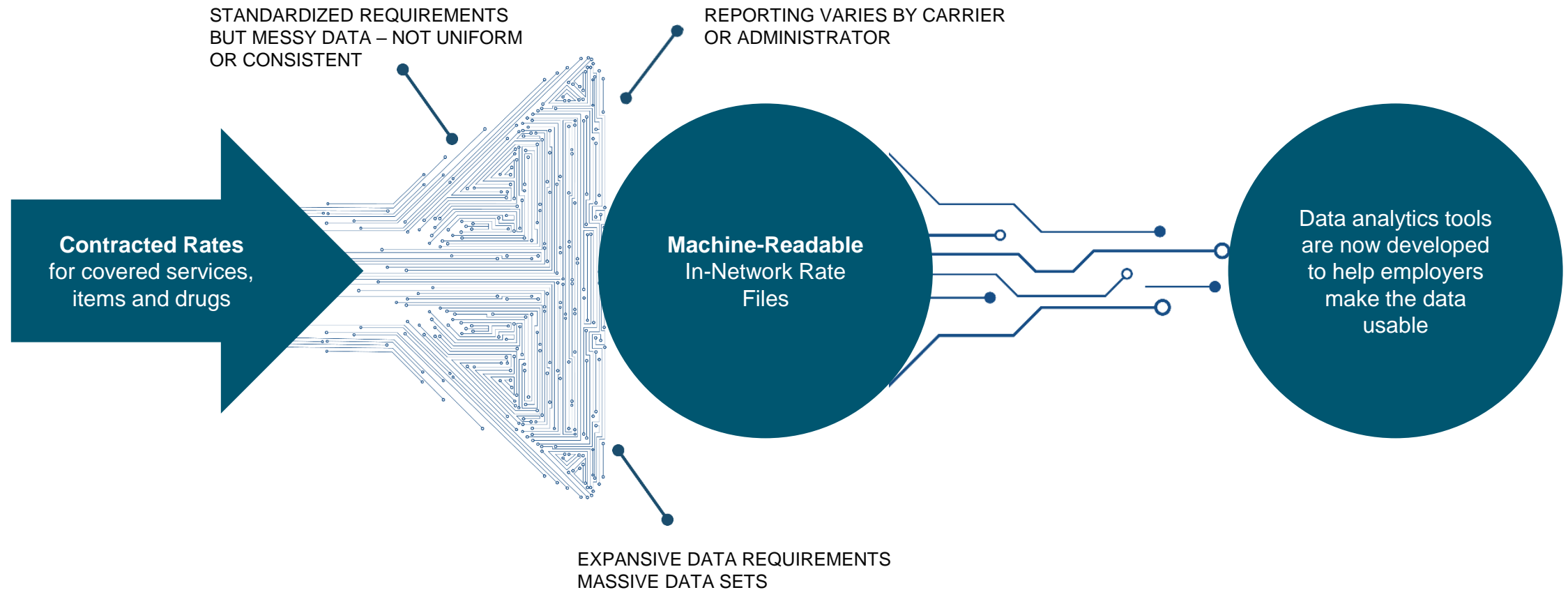


Gag Clause Prohibition

Employer plan sponsors are prohibited from entering into contracts that restrict access to price / quality of care data.

Price Transparency Data: Useful But Unusable

The machine-readable contract rate information now mandated by the Transparency in Coverage Rule is massive and largely not usable for employers in its published state.



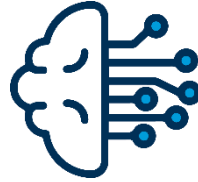
ACA/CAA Transparency: Future Expectations?

Machine Readable Files (MRFs)



WHAT DATA IS AVAILABLE?

- Over 400 billion records of in-network pricing
- Contracted rates by plan and network



POTENTIAL ANALYSIS TOOLS

- Compare provider rates across networks
- Facility allowed amounts relative to Medicare rates
- Compare rates in a market across networks and providers



FIDUCIARY RESPONSIBILITY?

- Identify optimal network based on population geographies
- Identify high cost, low-quality providers
- Target and negotiate provider contracts



Recent Lawsuits

ERISA Fiduciary Litigation



These lawsuits may signal a wave of fiduciary breach claims over welfare plan vendor selection and monitoring.

- Since 2006, retirement plans have been the target of multiple class action lawsuits alleging breach of fiduciary duties as it relates to vendor selection, fees and investment performance
- The first three health and welfare class action lawsuits were filed against employers beginning in 2024—[Lewandowski v. Johnson & Johnson](#), [Navarro et al. v. Wells Fargo](#), and [Stern v. JPMorgan Chase](#)—all alleging breach of their fiduciary duties, including:
 - Failure to adequately negotiate favorable contract pricing terms
 - Failure to adequately consider a pass-through PBM model
 - Failure to carve out specialty pharmacy from the contract



Employer Takeaways

Considerations & Best Practices



This is not an exhaustive checklist, rather some options for consideration.

- Fiduciary obligations focus more on the process than on the result/outcome
- Document decisions – and why those decisions were made
 - Helpful when looking back several years as memories fade and/or the people who made the decisions are no longer there
- Consider establishing a committee
 - Creates the cadence of a meeting and minutes to reference
 - Be careful about appointing committee members with apparent conflicts of interest
- Focus on use of plan assets
 - Exclusive purpose of providing plan benefits or paying reasonable expenses of plan administration
 - Selection of lowest cost vendor is not required if you have a reasonable basis for selection
- Remember duty of prudence
 - Fiduciary should either have expertise to manage plan or hire someone who does
 - Fiduciary should monitor delegates

Hylant's Health & Welfare Plan Fiduciary Toolkit



Distinct toolkits tailored for ERISA plans and public sector plans!

- Hylant's Fiduciary Toolkit provides essential resources, expert guidance, and practical tools to help you fulfill your obligations with confidence
 - Fiduciary Toolkit Overview
 - Fiduciary Process Guide
 - Sample Health & Welfare Committee Charter
 - Sample Health & Welfare Committee Minutes
 - Frequently Asked Questions
- Each component is structured to simplify complex fiduciary concepts, offering clear guidance, actionable recommendations, and practical tools to support effective plan management

Questions?



Thank you!

For more information about Hylant,
please visit us at [hylant.com](https://www.hylant.com).

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