

# Take Control of Your Benefits Program Data



## Fulfill Your Fiduciary Responsibilities by Monitoring Your Health Plans

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**Disclaimer:** Attention! Nothing in this document constitutes legal advice, so please consult with your attorney or seek legal advice through the American Bar Association.

# Fulfill Your Fiduciary Responsibilities by Monitoring Your Health Plans

Your employee benefits data provide a wealth of information you could use to identify cost drivers and trends and implement interventions or plan design changes that address those issues. But if you don't have access to or control of your data, you're making decisions blindly. And that could cost you if you are found in breach of your fiduciary duties under the Employee Retirement Income Security Act (ERISA).

Employers, including private-sector, for-profit and non-profit entities, providing group benefit plans are subject to the terms of ERISA. This collection of regulations applies to both fully insured plans and those that are self-funded directly by the employer or union.

## Fiduciary Responsibilities

ERISA requires that at least one fiduciary (person or entity) be named for each plan offered. A fiduciary exercises discretion or control over how the plan is operated and its assets. Fiduciary status is based on the functions performed for the plan, not a person's title.

ERISA identifies specific fiduciary responsibilities:

- Acting solely in the interest of plan participants and their beneficiaries, with the exclusive purpose of providing benefits to them
- Carrying out duties prudently
- Following the plan documents (unless inconsistent with ERISA)
- Holding plan assets (if applicable) in trust
- Paying only reasonable plan expenses.

ERISA defines a "fiduciary" as follows:

A person [or an entity] is a fiduciary with respect to a plan to the extent:

- (i) he exercises any discretionary authority or discretionary control over the management of such plan or exercises any authority or control respecting management or disposition of its assets
- (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

Source: 29 U.S.C. § 1002(21)(A)

## Liability

If you're a plan sponsor and are found to not have acted in the best interest of participants, you could be held personally liable to restore any losses to the plan or any profits made through improper use of the plan's assets resulting from your actions or inactions ([Department of Labor](#)). Both civil and criminal penalties may apply depending on the nature and severity of the breach.

### Notable 401(k) Cases

There have been many cases where companies were found to be in breach of ERISA. Examples include:

-  Ameriprise Financial, which agreed to pay \$27.5 million to settle a lawsuit for loading up the company 401(k) plan with its own expensive, underperforming mutual funds and charging employees excessive fees, thus violating its responsibility to plan participants under federal retirement law ([Star Tribune](#)).
-  Boeing agreed to pay \$57 million to settle a lawsuit that accused it of charging excessive fees and choosing higher-cost investment offerings for the workers and retirees who participate in its 401(k) retirement plan ([The New York Times](#)).

## Notable Health Plan Cases

For years, CFOs and HR/benefits executives didn't devote that same level of attention to their fiduciary responsibilities surrounding health plans, even though they spend 2 to 2-1/2 times more on healthcare benefits than on retirement benefits? It's time to take the responsibilities to heart, as more and more fiduciary breach lawsuits are being filed on behalf of health plan participants.

- The Department of Labor became involved in a 2016 lawsuit filed against GAP, Inc. and United Health in 2016. The suit alleged that 2 plan administrators were guilty of “self-dealing and embezzlement,” deceptively concealed through an “illegitimate recoupment scheme that financially awarded United for wrongfully recouping valid benefits” ([Forbes](#)).
- According to [AVYM](#):
  - A temporary restraining order was issued against Multiple Employer Welfare Arrangement (MEWA) for “allegedly failing to pay more than \$26 million in member’s health bills, while keeping a substantial amount of money for themselves, then siphoning off those funds to offshore Bermuda accounts.”
  - In 2017, more than 30 suits were brought by employers that alleged Blue Cross of Michigan “skimmed unauthorized fees from their health plans.” In 2014, an appeals court held the insurer liable under ERISA for “charging hidden and unauthorized fees as a means of improving its financial position without alienating customers,” costing the Blues plan \$6 million.
  - MagnaCare negotiated a \$14.5 million settlement with the Department of Labor in 2017. The third party administrator allegedly “breached its fiduciary duties and committed prohibited transactions, including dealing with plan assets in its own interest.”
  - In 2016, 113 of Cigna’s self-insured clients were hit with an alleged breach of fiduciary duties under ERISA for fraudulent use of health plan funds.



## Limiting Your Liability

You can take steps to show you're acting in the best interest of plan participants and limit your liability in certain situations. Start by documenting the processes you use to carry out your responsibilities. You and everyone who handles plan funds or other plan property should also be covered by a fidelity bond.

## Hiring Service Providers

Another way to protect yourself is to hire or engage service providers knowledgeable in their fields to handle the operations of the plans or how assets are allocated. If you are a self-insured plan and outsource administrative functions of your benefits to carriers, third party administrators, pharmacy benefits managers, etc., you must carefully review the contract language and confidentiality provisions to make sure that the you “own” your data, i.e., that there are no restrictions on access to or use of your claims data.

Some vendors may try to claim that the data are proprietary because they have the potential to reveal negotiated provider discounts or proprietary claims processing methodologies. Others may charge you to share data with third party vendors, or may limit how you or other vendors may use your data.

Service providers may claim you're not allowed to:

- Aggregate your claims data
- Share claims data with a third party vendor
- Combine provider and financial fields.

These prohibitions could put you at risk for penalties by limiting your ability to get a detailed view of your medical costs and spend.

### **Monitoring Your Plan**

Even if you hire an outside service provider, you still have a fiduciary responsibility for your plan and its participants. So it's very important that you monitor your vendors to ensure they're acting in your participants' best interest.

What's the best way to monitor your service vendors and reduce your risk?

### **Own your data.**

You need unfettered access to your benefits data to limit your fiduciary risk. Read contracts closely and insist that language limiting use of or charging for your data be removed. Cite ERISA as the reason such language puts you at personal risk.

### **Innovu's Tools Let You Own Your Benefits Data**

Innovu gives you the tools you need to properly monitor your health plans and take control of your data. Innovu's data analytics platform lets you:

- See if claims are being adjudicated according to your plan design or identify where errors may be occurring.
- Receive alerts about issues and trends in your population so you make plan design changes or add programs targeting the issues impacting your population. Benchmark your plan's performance regionally, nationally, and across industries.

**Contact Innovu to take control of your data and fulfill your fiduciary duties as a plan sponsor.**

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### **About Innovu**

Innovu delivers secure, cloud-based data analytic solutions to self-funded and fully insured employers, benefit advisors, and communities (business groups on health and industry associations). By securely integrating benefits and risk data across all programs — medical, Rx, vision, dental, wellness/biometrics, workers' compensation, disability, absenteeism, safety, 401(k), etc. — we create a 360-degree view of their populations.

They can use this correlative, never before seen insight to design and measure targeted benefits programs and interventions that improve member health and mitigate business risk.



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