

Stakeholder Collaboration, Conflicts of Interest & Self-Dealing

Executive Takeaway

Health systems face growing fiduciary and litigation risk because they often serve multiple roles simultaneously: employer, plan sponsor, provider, network participant, and fiduciary. Regulators and plaintiffs are increasingly scrutinizing whether health systems are acting in the best interests of plan participants or benefiting affiliated business interests through plan decisions.

Questions To Take Back To Your Organization

1. Are fiduciary and business decisions clearly separated?
2. Where could conflicts of interest exist within current plan arrangements?
3. Can compensation and network arrangements withstand regulatory scrutiny?
4. Are governance and recusal processes formally documented?
5. Do we have sufficient evidence to demonstrate decisions were made in participants' best interests?

Why This Matters Now

- **Litigation Is Expanding Into Health Plans**

ERISA fiduciary breach theories previously focused on retirement plans are now being applied to health and welfare plans, with health systems increasingly named in litigation.

- **Transparency Is Increasing**

Compensation disclosure requirements, price transparency rules, and network oversight are making health plan arrangements more visible to regulators and plaintiffs.

- **Health Systems Have Unique Exposure**

Because health systems often sit on both sides of a transaction, conflicts of interest can arise more easily than in traditional employer-sponsored plans.

The Critical Distinction

Settlor Decisions

Business decisions such as:

- Plan design
- Eligibility rules
- Funding structureEstablishing or terminating a plan

Fiduciary Decisions

Administration decisions that must be made solely in participants' best interests:

- Network selection
- PBM oversight
- TPA selection
- Claims administration
- Vendor monitoring

Key Question: Can the organization clearly demonstrate that a decision benefits plan participants rather than the health system itself?

Where Risk Commonly Exist: Fiduciary Duty & Conflicts of Interest

High-risk areas identified during the session included:

1. Domestic provider steerage
 2. PBM rebate retention and spread pricing
 3. Broker and consultant compensation
 4. Internal TPA, UM, and administrative services
 5. Plan assets and premium management
 6. 340B-related arrangements
 7. Voluntary benefits
 8. Mental health parity compliance
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Where Risk Commonly Exist: Fiduciary Duty & Conflicts of Interest Leading Practices for Risk Mitigation

Organizations should consider:

Governance

1. Formal fiduciary committee structure
2. Conflict-of-interest policies
3. Documented decision-making processes
4. Recusal protocols

Oversight

1. Vendor and PBM benchmarking
2. Compensation reviews
3. Independent fiduciary involvement when necessary
4. Routine audits and monitoring

Documentation

1. Maintain separate settlor and fiduciary decision tracks
 2. Document fair-market-value analyses
 3. Preserve decision rationale and supporting evidence
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In Summary

Fiduciary risk is increasing.

Health and welfare plan litigation is accelerating and health systems are increasingly being targeted.

Every decision should pass the participant test.

Leaders should consistently evaluate whether decisions are being made for plan participants or affiliated business interests.

Self-dealing often hides in everyday operations.

Network strategies, PBM contracts, internal services, and compensation arrangements are common risk areas.

Documentation is a critical defense.

Organizations should be prepared to demonstrate how decisions were made and why they served participant interests.

Independent oversight reduces risk.

Independent fiduciaries, benchmarking, and formal governance structures are emerging best practices.

The era of limited visibility into health plan arrangements is ending. Health systems should proactively evaluate fiduciary governance, potential self-dealing risks, PBM and vendor relationships, and provider steerage strategies to ensure decisions can be defended as being in the best interests of plan participants. Organizations with strong governance, transparency, and documentation will be best positioned to manage future regulatory and litigation risk.