

---

**FOR THE EXCLUSIVE USE OF**  
ASONNEBERG@WAGNERLAWGROUP.COM

---

From the Chicago Business Journal:  
<https://www.bizjournals.com/chicago/news/2022/01/04/whos-watching-the-money-expanding-cost-health-care.html>

# Who's watching the money?

## The expanding cost and responsibility of employer-sponsored health care

### Sponsored Content

Jan 4, 2022

---

Businesses across the board, from automakers to tech companies to taxpayer-funded school systems, spend a growing portion of their budgets on employees in the form of salary and benefits, especially health care plans. Over the years, employees have been asked to contribute increasingly more toward their own health care coverage. Examining exactly where health care dollars are spent is not just a budget management or cost-saving practice for business, as plan sponsors are reminded often, it is also a fiduciary responsibility under the Employee Retirement Income Security Act (ERISA).



Medical plans are ripe for fiduciary liability, mainly from well-recognized waste in the system, according to health benefit compliance expert Brenna A. Davenport. Employers have a duty to mitigate this waste.

The U.S. Department of Labor Employee Benefits Security Administration has oversight for the fiduciary duties applicable to

employee welfare benefits plans. Under ERISA, employers are accountable for spending employee health care contributions as well as the employer's contributions with the care, skill, and diligence of a prudent person. [1] In comparison to 401(k) benefit plans, very little attention has been given to fiduciary responsibility of health and welfare benefits. But medical plans are ripe for fiduciary liability, mainly from well-recognized waste in the system, according to health benefit compliance expert Brenna A. Davenport. Employers have a duty to mitigate this waste. [2]

ERISA guidelines for prudent oversight of a health plan are relatively vague, but there are best practices that not only limit fiduciary liability, but also significantly reduce the unnecessary spend in the plan assets.

### **Best practices for managing employees' health care contributions**

Take a page from how you handle 401(k) benefits. Fiduciaries are required to have "procedures in place so that on an ongoing basis they may review and evaluate whether the investment managers are doing an adequate job." [3] There is significant evidence that implementing that same type of ongoing review would be beneficial in health care claim payments.

Ensure claims are being monitored regularly and often. Ideally each claim is reviewed monthly, at a minimum once a quarter, by an independent partner aligned with the plan sponsor on business objectives.

Use advanced inferential analytic methods to analyze 100% of claims; this method will quickly detect the specific anomalies in the given claims population.

Avoid conflict of interests. Don't let the same entity who is processing your claims also be responsible for making regular reviews to find errors, fraud, waste, or abuse.

Once errors are identified, overpayments should be stopped within a reasonable time period so dollars are not lost to errors and fraud schemes.

These practices will prove their worth many times over when consistently tracking against success outcome measures. Having an independent expert consistently monitoring claim payments and applying best practices ensures that a company meets its

“prudent person” requirement, while also reducing the cost of employee health care.

A fundamental requirement to implement best practices are that the plan sponsor maintains control over who has access to their employees paid claims data and that the administrative services agreement allows for sensible oversight on the professional services purchased. Since plan sponsors are mandated to monitor and safeguard plan assets under ERISA, entering into an agreement that intentionally muddles payment details could arguably undermine ERISA fiduciary duty provisions. [4]

### **How does fiduciary responsibility benefit the employer?**

The issue boils down to this: benefits are a recruiting and retention tool for employers. In any successful business, resources need to be spent wisely. It behooves a company to not only provide the highest quality benefits overall, but to make sure the money invested on health benefits is not wasted unnecessarily on billing errors, abusive use of the emergency department, testing for medically unlikely scenarios, or on intentional fraud.

In October 2019, the Washington Health Alliance (WHA) [5] issued a report that examined waste in commercially insured and Medicare-insured individuals. The report evaluated 47 common treatments, tests, and procedures with a total estimated spend of \$703 million. Nearly half, 51%, of the measured services were found to have minimal clinical value, simply put, were wasteful.

The good news for employers is that prudent oversight of health care claims allows employers to provide benefits to employees at a lower cost while also enabling them to carry out their fiduciary responsibility and simultaneously maintain their focus on building cars, developing software, or providing education.

*Read more about this topic, as well as case studies in our full white paper on ERISA and Healthcare Benefits.*

*SmartLight Analytics combines the best inferential analytic models with a team of health insurance data and clinical experts to find fraud, waste, and abuse in self-funded employer healthcare plan claims data. SmartLight Analytics works with large employers – typically with 10,000 or more employee members – to help them*

*reduce health care spending by identifying and mitigating waste in claims.*

*Sources*

*[1] U.S. Department of Labor. Understanding Your Fiduciary Responsibilities Under a Group Health Plan. September 2015.*

*[2] United States: Fiduciary Responsibility... You Mean That Stuff Applies to the Health Plan I Sponsor Too? Brenna A. Davenport. June 14, 2017.*

*[3] InvestmentNews. "Appointing and monitoring a 401(k) investment manager under ERISA". Marcia Wagner. July13, 2017.*

*[4] American Health Policy Institute. "ERISA Fiduciary Responsibilities for Health Care Plans". 2018.*

*[5] "First, Do No Harm: Calculating Health Care Waste in Washington State Multi-Year and Medical Group Results," Washington Health Alliance. October 2019*