

FIDUCIARY DUTY & CODE OF CONDUCT

FOR HEALTH INSURANCE COMMITTEES, CONSULTANTS AND BARGAINING PARTIES

by Neil Bodine

1. Who is a fiduciary?

A **fiduciary** is anyone who is elected or appointed to a position of trust, where his or her duty is to act on behalf of others, rather than solely for himself or herself.

A **fiduciary** regarding **health benefits** is everyone who participates in decision-making regarding

- health plan benefits,
- the selection of health plan consultants,
- the selection of health care providers, and
- other decisions affecting the quality and costs of health care benefits

2. What is my duty as a fiduciary?

Any one who acts as a **fiduciary** regarding **health benefits** owes a **fiduciary duty** to the **plan beneficiaries**, the District's employees..

Your fiduciary duty requires that you act **prudently to protect the beneficiaries** and to **put their interests first** and above your own.

Your fiduciary duty requires that you

- a. Act in **good faith**
- b. Act in the **best interests** of the organization and its beneficiaries
- c. Make **reasonable inquiry** regarding relevant facts
- d. Act in a manner than an **ordinarily prudent** person would act under the same circumstances
- e. Not engage in any activity that **conflicts with the interests** of the organization and its beneficiaries.

You may **rely on**

- reliable employees
- competent outside experts, such as consultants, attorneys and accountants, and
- responsible committees

However, you have **a duty to find out** whether such employees, experts and committees are **competent, reliable and free of conflicts of interest**.

You may also **delegate** responsibility and authority, but you must also **make sure** their duties are performed properly.

If you **act in good faith**, you will not be personally liable, even if your decisions unintentionally harm the organization or its beneficiaries.

3. What is a conflict of Interest or self dealing?

Self dealing or a **conflict of interest** is any transaction from which you **personally benefit**.

Self dealing is **permissible only** when:

- You **fully disclose** the nature of your conflict of interest,
- You **refrain from the discussion** of the issue,
- You **abstain from voting** on the transaction, and
- The decision is **just and reasonable**.

4. How can I violate or breach my fiduciary duty?

Any act which you do **in bad faith** or put **your interests ahead** of the health plan beneficiaries **violates** your duty.

Here are **some examples**

- a. **Accepting gifts** or other things of value from a health provider, plan attorney or health broker or consultant, with whom you do or may contract, such as
 - trips and travel expenses,

- engagements as a compensated speaker,
- cocktail parties (with free food and/or drinks),
- meals, and
- other gifts, such as briefcases, and pens.

You may, however, accept free drinks, meals or gifts as part of a conference where such a provider, attorney or consultant is one of the sponsors.

- b. Having a financial interest in a service provider and **failing to disclose** it,
- c. Having a financial interest in a service provider and **failing to abstain** from discussion **and/or voting** on the selection of that provider.
- d. **Failing to investigate** an apparent conflict of interest or disclose a known conflict of interest by another fiduciary, such as another member of the Benefits Committee, a District employee, a broker, consultant, attorney or accountant.
- e. **Failing to become informed** prior to making decisions
- f. **Failing to reasonably inquire** about important information, such as
 - What conflicts of interest brokers, consultants, accountants or attorneys advising on the health plan might have?
 - How brokers and consultants are compensated or financially benefit from services performed for your plan?
 - What is the nature and consequences of different plan options?
- f. **Putting your personal needs ahead** of the needs of the group when making decisions,
 - Such as deciding on plan benefits or plan design solely based on how you would personally benefit or be harmed.
- g. **Letting others make decisions** for you, rather than exercising your own informed and independent judgment.