

The background of the slide features a hand holding a document over a stack of papers, with several colorful plus signs (+) scattered around. The text is overlaid on this background.

THE 2026 COMPLIANCE LANDSCAPE:

WHY GOVERNANCE MATTERS MORE THAN EVER



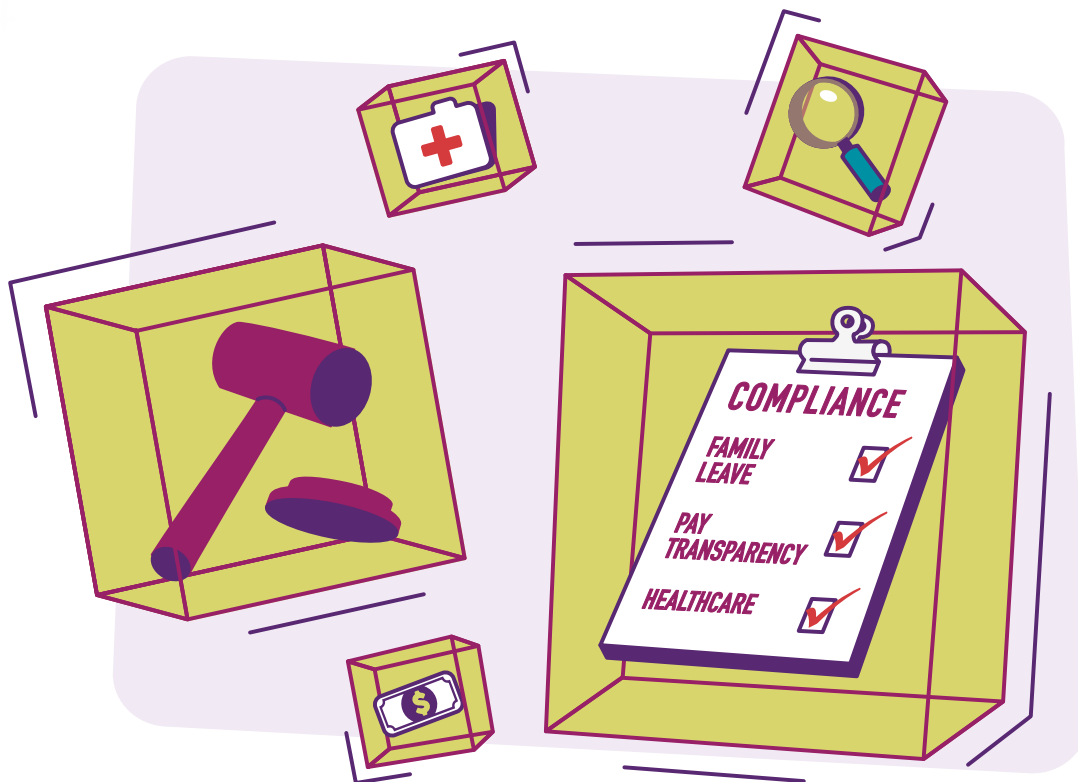
EXECUTIVE SUMMARY

For years, employee benefits compliance was largely viewed as a matter of meeting requirements. Employers distributed notices, retained required documents, worked through annual renewals, and relied on carriers, TPAs, consultants, brokers, attorneys, and other partners to help navigate an increasingly complex regulatory environment. While compliance was never simple, the primary objective was often ensuring the right boxes were checked at the right time.

Today, that approach is no longer enough.

Across nearly every area of employee benefits and organizational risk, regulators, courts, lawmakers, and even employees are focusing less on how decisions were made. Employers are increasingly being asked to demonstrate oversight, document decision-making, monitor vendors, evaluate alternatives, identify conflicts, and maintain evidence that a prudent process occurred. Whether the topic is fiduciary responsibility, pharmacy benefit management, healthcare costs, HIPAA privacy, mental health parity, cybersecurity, or artificial intelligence, the underlying expectation is the same: Organizations must be able to demonstrate sound governance.

This represents one of the most significant shifts in the benefits landscape in recent years. Employers are moving from a world focused primarily on compliance obligations to a world increasingly focused on governance responsibility. The organizations that adapt successfully won't necessarily be those with the largest compliance teams. They will be the organizations that establish clear lines of accountability, build repeatable decision-making processes, maintain meaningful documentation, and treat oversight as an ongoing responsibility rather than a perfunctory annual exercise.



CHAPTER 1

HEALTH PLANS ARE NOW A FIDUCIARY TARGET

Fiduciary risk was long regarded as a retirement plan issue. When employers thought about fiduciary liability, they thought about 401(k) investment committees, participant disclosures, fee benchmarking, investment lineups, and retirement plan litigation. As a result, many organizations developed governance structures specifically designed to oversee retirement plans while health and welfare plans received comparatively less attention.

That distinction is beginning to disappear.

Health plans are now facing increased litigation, expanded transparency requirements, growing scrutiny of pharmacy benefit arrangements, and heightened expectations around governance and oversight. Regulators and plaintiffs' attorneys are paying closer attention to how employers evaluate vendors, monitor service providers, review fees, communicate with participants, and document significant decisions. Issues once viewed as administrative responsibilities are increasingly being examined through a fiduciary lens.

WHY NOW?

Several forces are driving this shift.

Healthcare costs continue to increase, placing pressure on both employers and employees. As prescription drug spending grows and healthcare expenditures continue climbing, greater attention is being paid to the decisions organizations make regarding benefit programs and vendor relationships. Policymakers and regulators are seeking greater transparency into the financial arrangements that influence those decisions.

Healthcare delivery has also become significantly more complex. Employers may work with a carrier, TPA, PBM, wellness vendor, transparency solution, navigation tool, analytics partner, and several other specialized vendors simultaneously. While these relationships can create meaningful value, they also create additional governance and oversight responsibilities. Every additional vendor relationship is another arrangement that should be evaluated, monitored, and documented.

Finally, plaintiffs' attorneys are increasingly focused on group health plans. Historically, many ERISA lawsuits centered on retirement plans. Today's litigation environment is beginning to test similar fiduciary concepts within health and welfare plans, particularly around pharmacy benefits, vendor oversight, fees, participant impact, and conflicts of interest.

THE MOST DANGEROUS PHRASE IN BENEFITS GOVERNANCE

Perhaps the greatest governance risk can be summarized in a single sentence:

“

We've always done it this way.

”

Many employers have longstanding relationships with carriers, TPAs, PBMs, consultants, and other service providers. In many cases, those relationships are valuable and successful. Even so, they don't eliminate the need for oversight.

A vendor may be performing well today, but you still have a responsibility to periodically evaluate fees, benchmark services, review performance, identify contractual risks, and document why the relationship continues to make sense for the plan and its participants.

The question regulators and courts increasingly ask isn't whether you have a good vendor but how you determined it was the right vendor and how you monitored that decision over time.

Those are very different questions.

WHAT PLAINTIFFS' ATTORNEYS WANT TO SEE

Imagine an employer makes a significant health plan decision in 2026. Two years later, that decision becomes the subject of a lawsuit, audit, DOL inquiry, participant complaint, or regulatory review.

Most employers assume the discussion will focus primarily on the outcome, but the real center of attention is the decision-making process. Investigators and attorneys often want to understand:

- + Who made the decision?
- + What information was reviewed?
- + What alternatives were considered?
- + What fees were evaluated?
- + Were conflicts identified?
- + Was expert advice obtained?
- + Was the rationale documented?
- + Was the decision revisited later?

This is where governance either proves itself or begins to break down.

Meeting minutes that seemed unimportant suddenly become critical. Vendor evaluations that felt administrative become evidence. Governance calendars, committee records, benchmarking analyses, compensation disclosures, and decision memos become proof that a prudent process occurred or perhaps didn't. Without them, organizations may struggle to demonstrate how decisions were made, regardless of whether the outcome was ultimately reasonable.



CHAPTER 2

BUILDING A DEFENSIBLE FIDUCIARY PROCESS

One of the biggest misconceptions in benefits governance is the belief that good outcomes automatically mean good decisions. Fiduciary responsibility doesn't work that way.

A vendor relationship that ultimately saves money isn't necessarily evidence of a prudent process. Likewise, a decision that fails to produce the expected results may still be defensible if the organization followed a thoughtful, informed, and well-documented process based on the information available at the time.

Put differently:

Good governance focuses on decision quality, not outcome prediction.

Because no employer can perfectly predict the future. What employers can do is establish consistent frameworks for making decisions, documenting reasoning, monitoring results, and revisiting assumptions over time.

THE SIX ELEMENTS OF A DEFENSIBLE PROCESS

1. AUTHORITY

Before making any significant benefits decision, organizations should understand who has authority to act and whether responsibilities have been formally delegated.

Many employers are surprised to learn that fiduciary status is often based on function rather than title. Individuals may have fiduciary responsibilities because of the decisions they make, even if the word "fiduciary" never appears in their job description. HR leaders, finance leaders, executives, boards, committees, and benefit professionals may all have responsibilities depending on the specific facts and circumstances.

2. INFORMATION

A prudent process begins with informed decision-making.

Organizations should gather and review relevant information, fee disclosures, contracts, benchmarking results, performance metrics, regulatory guidance, and expert input before making significant decisions.

Employers aren't expected to collect every possible piece of information, but it's in everyone's best interest to be able to demonstrate that the organization had sufficient information to make an informed decision.

3. ALTERNATIVES

A prudent process generally requires evaluating available options. Employers should explore and understand the alternatives at decision time and have a documented rationale for the path that they ultimately select.

4. CONFLICTS

Organizations should actively identify and evaluate potential conflicts of interest.

Vendor compensation arrangements, referral structures, consulting relationships, and business partnerships should be carefully evaluated as part of the decision-making process. Transparency helps employers demonstrate that participant interests were appropriately considered.

5. DOCUMENTATION

Documentation remains one of the most effective risk-management tools available to employers.

Strong documentation captures:

- + Information reviewed
- + Alternatives considered
- + Key discussion points
- + Risks identified
- + Final rationale
- + Assigned responsibilities
- + Follow-up actions

If an organization cannot reconstruct its thought process two years later, defending that process becomes significantly more difficult.

6. MONITORING

Fiduciary responsibility doesn't end once a contract is signed or a decision is made.

Governance requires ongoing oversight. That means regularly reviewing vendor relationships, measuring and monitoring performance, evaluating new risks, and revisiting contracts. Governance is a recurring business process rather than a one-time event tied to renewals or audits.



CHAPTER 3

THREE COMPLIANCE QUESTIONS LEADERSHIP TEAMS SHOULD BE DISCUSSING RIGHT NOW

Every year brings new regulations, guidance, deadlines, and administrative requirements. What separates the developments below from routine compliance activity is that each requires a business decision, not simply an administrative response.

These aren't issues that can be solved solely through paperwork. They require organizations to evaluate risk, establish priorities, document reasoning, and determine how they want to govern their health and welfare plans moving forward.

MEDICARE PART D: ARE YOUR EMPLOYEES AT RISK OF UNEXPECTED PENALTIES?

For years, Medicare Part D creditability testing was largely viewed as a routine process. Determine whether the employer-sponsored prescription drug plan was at least as rich as Medicare Part D, distribute the appropriate notices, and move on.

But the benchmark has changed. Changes to Medicare Part D significantly increased the richness of the Medicare benefit. Because Medicare now covers a larger share of prescription drug expenses, employer-sponsored plans must satisfy a higher threshold to be creditable. Plans that met the standard in prior years may no longer qualify under the updated requirements. HDHP plans may be particularly affected.

At first glance, this appears to be a technical compliance issue, but it's one with significant employee implications.

A participant who is eligible for Medicare Part D but delays enrolling while covered by an employer plan with non-creditable drug coverage may owe a late enrollment penalty when they later enroll in Part D. Those penalties can be permanent. For that reason, creditability notices are much more than required disclosures. They're important communication tools that help individuals make informed decisions about their healthcare coverage options.

The governance question employers should ask is straightforward:

HAVE WE TESTED OUR ASSUMPTIONS, OR ARE WE RELYING ON LAST YEAR'S CONCLUSIONS?

Organizations should revisit creditability determinations, understand how recent changes affect their plans, and engage advisors when additional analysis may be necessary. A plan that was creditable last year is not automatically creditable next year.

WHEN A CLAIMS DECISION BECOMES A FIDUCIARY DECISION

One of the more overlooked developments in today's benefits landscape involves the independent dispute resolution (IDR) process under the No Surprises Act (NSA).

At a high level, the law protects participants from certain surprise medical bills in three distinct situations: (1) emergency services, (2) non-emergency services performed by out-of-network providers at in-network facilities, and (3) air ambulance services from out-of-network providers. When providers and health plans disagree about payment amounts in connection with these services, such disputes may be resolved through a formal and binding arbitration process – taking the participant out of the middle and treating the services as in-network for cost-sharing purposes.

Historically, many employers paid little attention to these disputes because carriers and TPAs largely handled them internally. Increasingly, however, employers may be asked to weigh in and provide direction.

For example, a carrier may ask an employer whether it wants to pay an arbitration award that the carrier believes was improperly submitted or continue challenging the award and potentially face future litigation or regulatory scrutiny. Both choices involve risk. Neither is purely administrative.

What makes this particularly important is the interaction with stop-loss coverage. A decision that appears financially prudent today could create unexpected liabilities tomorrow. If a dispute is finally resolved years later and stop-loss reimbursement is no longer available, the financial consequences may be very different than anticipated.

This is exactly the type of issue that highlights the importance of governance.

Rather than viewing the decision as a simple yes-or-no response, employers should approach it through a fiduciary lens:

- + What information was reviewed?
- + What claims data was analyzed?
- + What alternatives were considered?
- + What risks were identified?
- + Why was the final decision made?

The quality of the process may ultimately matter just as much as the outcome.

THE \$7,500 OPPORTUNITY: IS YOUR ORGANIZATION READY?

Recent changes to Dependent Care Assistance Programs have generated significant interest because they increased the contribution limit for the first time in nearly four decades, from \$5,000 to \$7,500.

For employers focused on attracting and retaining talent, the change represents a meaningful opportunity to better support working families facing increased childcare costs—so long as the organization is prepared to support the increased limit.

Plan documents may require updates. Payroll systems may need modification. Nondiscrimination testing assumptions should be revisited. Employee communications may need to be refreshed. And workforce utilization patterns may warrant additional evaluation.

Employers may also want to ask broader strategic questions:

- + Are our dependent care benefits aligned with today's workforce needs?
- + Do employees understand the value of these programs?
- + Are participation rates where we'd expect them to be?
- + Would additional education improve utilization?

The recent regulatory changes create flexibility, but the opportunity extends well beyond compliance. For many employers, this is an opportunity to strengthen their total rewards strategy.

CHAPTER 4

THE EXPANDING GOVERNANCE FRONTIER

As employers strengthen health plan governance, it's important to recognize that compliance and fiduciary responsibilities are no longer confined to traditional benefits administration.

Increasingly, organizations are being challenged to apply governance principles across a much wider range of risks.

Mental health parity. HIPAA privacy, security, and breach notification. Data governance. Permissible use of artificial intelligence. Wellness programs. Vendor oversight. At first glance, these topics appear unrelated. In reality, they all revolve around the same questions:

- + Who's accountable?
- + How are decisions documented?
- + What process exists?
- + How is risk monitored over time?

The specific subject matter may differ, but the governance expectations are remarkably similar.

MENTAL HEALTH PARITY: MORE THAN A COMPLIANCE REQUIREMENT

Mental health parity has evolved from a regulatory obligation into a broader governance issue.

Organizations are increasingly being asked to evaluate not only whether benefits technically comply with parity requirements but also whether employees have meaningful access to care, whether administration practices support parity objectives, and whether vendors are supporting such efforts and delivering on these expectations.

This requires collaboration across HR, benefits, legal and compliance, leadership, and vendor partners. It also requires ongoing monitoring.

Strong governance means moving beyond compliance to whether an employer's program is working as intended, and that's a much different conversation.

HIPAA PRIVACY & DATA GOVERNANCE

Virtually every employer that sponsors health benefits handles sensitive information. This is inescapably true if the plan is level- or self-funded. Claims questions, leave requests, accommodations, appeals, wellness initiatives, and vendor relationships create situations where protected personal information is accessed, shared, or stored. And privacy risk often emerges through everyday business processes rather than major cybersecurity events.

Strong governance requires employers to understand:

- + Who has access to sensitive, personally identifiable information
- + Why that access exists and is necessary
- + What physical, technical and administrative safeguards are in place
- + How vendor access is properly scoped and monitored
- + What controls prevent inappropriate use of data

The most successful organizations approach privacy governance as an ongoing operational discipline rather than an annual compliance exercise.

COMPLIANCE IS NO LONGER ABOUT PAPERWORK. IT'S ABOUT PROOF.

Perhaps the most important takeaway from today's compliance landscape is that the conversation is changing.

Employers are no longer evaluated solely on whether they distributed a notice, completed a filing, or signed a contract. Increasingly, they're evaluated on whether they can demonstrate a thoughtful process, meaningful oversight, sound governance, and documented decision-making.

That change creates challenge and opportunity. The challenge is that governance requires more intentionality than compliance alone. The opportunity is that building strong governance frameworks today will better position organizations to navigate future regulatory change, oversee vendors effectively, manage emerging risks, and make better decisions over the long term.

The future of compliance isn't checking boxes but building confidence that decisions can withstand scrutiny, risks are being appropriately monitored, and participants' interests remain at the center of every discussion. In other words, the future of compliance is governance.

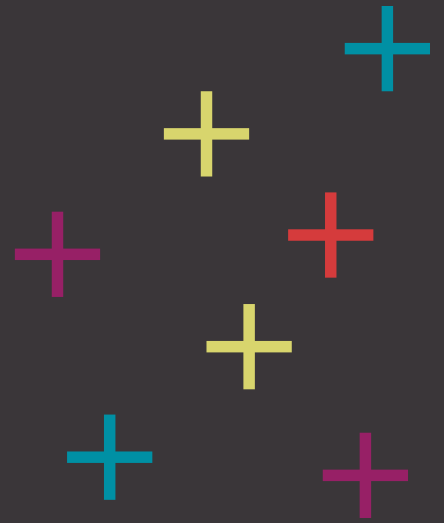
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