# The CEO's Fiduciary Checklist

**If Your Name Is on the Plan, Your Name Is on the Liability**

If your company sponsors a health plan, federal law (ERISA) makes the plan sponsor a fiduciary. That duty cannot be delegated away, outsourced to a broker, or handed to HR — and employees have started suing plan sponsors personally over the money their plans waste. "I trusted my broker" is not a defense. "I didn't know" is not a defense. Under ERISA, you are required to know.

Your duty comes down to four things: act solely in the interest of your participants, act with prudence, follow your plan documents, and pay only reasonable plan expenses. This checklist is how you prove — to yourself and to anyone who ever asks — that you did. Check what you can document today. Every empty box is your to-do list.

## 1. Know Whose Money It Is

*Plan assets belong to the plan, not the company. Every duty flows from that.*

- ☐ **I know who the named fiduciary of our health plan is — and I understand it is probably me.**
  *Check your plan document. If you're the plan sponsor and no one else is named, congratulations: it's you.*
- ☐ **We have a benefits/fiduciary committee that meets on a schedule and keeps written minutes.**
  *A committee with minutes is how prudence gets proven later. No minutes, no proof, no defense.*
- ☐ **Everyone who touches plan money is covered by an ERISA fidelity bond.**
  *Required by law — generally 10% of funds handled, up to the statutory cap. This protects the plan from theft.*
- ☐ **I have fiduciary liability insurance — and I know it is NOT the same thing as the fidelity bond.**
  *The bond protects the plan. Fiduciary liability coverage protects YOU. Most CEOs have never checked which one they have.*

## 2. Follow the Money

*You cannot pay only reasonable expenses if you don't know what you're paying.*

- ☐ **I have written compensation disclosures from every broker and consultant — all direct AND indirect pay — received BEFORE we signed or renewed.**
  *Federal law (the CAA) requires it. If you've never seen one, your broker is out of compliance and you're out of position.*
- ☐ **I have compared what my broker told me to what's filed on our Form 5500 Schedules A and C.**
  *Your 5500 is public. If the numbers don't match, one of those answers is false.*
- ☐ **Our TPA, network, PBM, and stop-loss arrangements have been benchmarked or competitively bid within the last three years — and it's documented.**
  *Prudence is a process, not an outcome. The RFP file IS the defense.*

- ☐ **I know who keeps the pharmacy rebates, and whether our PBM contract permits spread pricing.**
  *Two of the biggest leaks in any plan. If you can't answer this, the answer is: not you.*

- ☐ **I know which of our hospital contracts pay a percent of billed charges.**
  *A percent of a number the hospital invents is not a negotiated price. When their chargemaster rises, your cost rises automatically — and you agreed to it.*

## 3. Own Your Data

*You cannot manage what you are contractually forbidden from seeing.*

- ☐ **Our plan receives its own complete claims data, and our contracts say the data belongs to the plan.**
  *It's your money. A vendor that won't show you where it went is telling you something.*

- ☐ **Someone — with a name — reviews our claims experience against what we're being charged.**
  *Audit rights you never exercise are decoration. Recent lawsuits are built on exactly the waste a basic review would have caught.*

- ☐ **I have seen the federally mandated machine-readable files showing actual negotiated rates at the hospitals my employees use.**
  *The prices are public, free, and sitting online right now. A fiduciary in 2026 who has never looked has chosen not to know.*

## 4. Run the Plan by the Book

*ERISA's quiet requirement: do what your own documents say.*

- ☐ **Our plan document and SPD are current, consistent, and actually describe how the plan operates.**
  *Courts read your documents, not your intentions. If the plan does one thing and the document says another, you lose either way.*

- ☐ **Our annual compliance items are done and documented: Form 5500, the gag-clause attestation, prescription-drug (RxDC) reporting, and the mental health parity analysis.**
  *These are not suggestions. The gag-clause attestation is you certifying, annually, that no contract blocks you from seeing your own prices and data. Sign it falsely at your peril.*

- ☐ **When a claim is denied, our plan follows its written appeals process — and someone verifies that it does.**
  *Participants' rights don't evaporate because a vendor is handling it. You're responsible for your delegates.*

- ☐ **We monitor every vendor we've delegated to, on a schedule, in writing.**
  *You can delegate the task. You can never delegate the duty to watch the people doing it.*

## 5. Act Like It's Your Money — Because Legally, It Might Be

*Prudence means investigating, deciding, and documenting — then doing it again next year.*

- ☐ **At the last renewal, we saw real alternatives — not three carriers quoting the same model.**
  *Self-funding, level-funding, reference-based pricing, direct contracts, direct primary care. If none were presented, ask who benefited from the silence.*

- ☐ **I can explain, with our own claims data, what drove our last renewal increase.**
  *"Trend" is a shrug with a percent sign. A fiduciary accepts numbers that are explained, not asserted.*
- ☐ **Every decision above lives in one fiduciary file: disclosures, minutes, benchmarks, contracts, attestations.**
  *The fiduciary who documents everything has nothing to fear from the question "how do you know?" — and everything to gain from asking it first.*

## The Bottom Line

Count your empty boxes. Each one is a question a Department of Labor investigator or a plaintiff's attorney already knows how to ask — and the good news is that every single one can be fixed, starting this quarter, mostly with documents you already have the legal right to demand. Fiduciary duty isn't a threat. It's leverage. The same law that puts your name on the liability puts you in charge of the money — and the sponsors getting sued are the ones who never picked it up.