

2020 Advisory Council on Employee Welfare and Pension Benefit Plans

**Considerations for Recognizing and Addressing Participants
with Diminished Capacity**

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The mission of the Employee Benefits Security Administration (EBSA) is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families.¹ One way EBSA seeks to accomplish this mission is by assisting plan fiduciaries and others in understanding their obligations under ERISA and helping workers and retirees understand their benefits and receive the benefits they have earned.²

As our population ages, employers, plan sponsors and their service providers, as well as plan participants, can benefit from insights into how various industries, professionals and service providers identify and address the unique challenges associated with individuals who may demonstrate diminished mental capacity.

The 2020 Council intends to identify the effective considerations and practices that various industries, organizations, and providers have put in place and use when servicing an individual who exhibits diminished mental capacity to the point that he or she may have impaired judgment or be susceptible to undue influence. We hope to help plan participants better navigate and understand their benefit options and, in the end, help employers, plan sponsors and plan service providers protect participants from potential fraud and financial abuse.

The Council does not intend to address state law regarding mental capacity, any legal recourse available for injured parties, or any cybersecurity considerations for benefit plans.³ Rather, the purpose of the review is to explore whether there are effective practices and processes that employers, plan sponsors, and plan service providers may choose to implement to better serve plan participants and beneficiaries.

¹ <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/mission-statement>.

² <https://www.dol.gov/sites/dolgov/files/legacy-files/budget/2019/FY2018-2022StrategicPlan.pdf>, page 25.

³ <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2016-cybersecurity-considerations-for-benefit-plans.pdf>.