

# Callan



February 19, 2026

**Alaska Mental Health Trust  
Authority**

Fiduciary Education

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**Steve Center, CFA**  
Fund Sponsor Consulting

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# Introduction

## Presenters

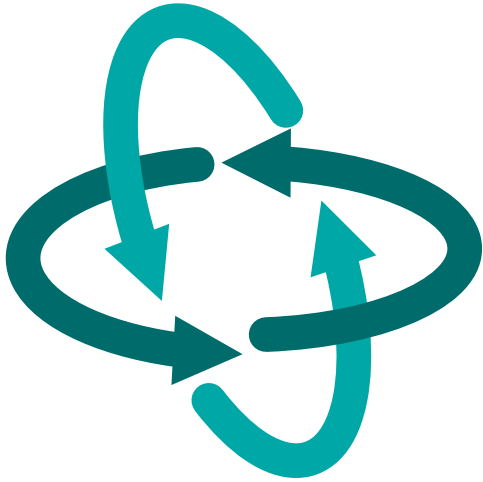


### **Steve Center, CFA**

- 16<sup>th</sup> year with Callan, 27<sup>th</sup> Year in the industry
- Senior Vice President, West Coast Consulting Team
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## Today's Agenda



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### The Role of the Fiduciary

- Historical Review
- UPIA and UPMIFA
- Who is a Fiduciary?
- Central Duties of a Fiduciary
- Recommendations for Fiduciary Conduct

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## **The Role of a Fiduciary**

# What is a Fiduciary?

## Generally, a fiduciary is...

- Someone entrusted with money or property who is charged with an obligation to **act in the interests of another party**;
- Determined by either legal designation OR their actions;
- Acting "...with the care, skill, prudence, and diligence, that a prudent person acting in like capacity and familiar with such matters would use";
- Largely **determined by actions** as much as by job **title or designation**; and
- Dedicated to a process, evaluating its outcomes and making successive changes to improve.



"Don't worry about doing the right thing. There'll be plenty of time for that when you're fired, retired, or reincarnated."

## Historical Review

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**1830**

Prudent Man Rule – Harvard College vs. Amory

**1952**

Harry Markowitz, Modern Portfolio Theory

**1963**

Studebaker bankruptcy and pension default

**1972**

Uniform Management of Institutional Funds Act

**1974**

ERISA (Employee Retirement Income Security Act)

**1992**

Prudent Investor Rule

**1997**

Uniform Management of Public Employee Retirement Systems Act

**2006**

Uniform Prudent Management of Institutional Funds Act  
(revised the 1972 Uniform Management of Institutional Funds Act)

## Alaska Mental Health Trust: Governed by the State of Alaska

The Alaska Mental Health Trust is governed by the State of Alaska, and as such must operate under the rules of the Uniform Prudent Investor Act (“UPIA”) and the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”). Both have been adopted by the State of Alaska and serve as the foundation for the fiduciary standards that the Board of Trustees must follow.

### Uniform Prudent Investor Act - UPIA

Federally established in 1992

Updates the Prudent Man Rule (1830/1959) by including the concepts of modern portfolio theory (“MPT”) and the total portfolio context

Provides guidelines for prudent investment with a focus on portfolio strategy, diversification, and Trustee responsibility

Permits fiduciaries to include “risky” investments, including derivatives, commodities, and futures, if they align with portfolio goals and overall diversification

Allows fiduciaries to delegate investment functions to qualified third parties

Focus is on overall objectives, minimizing risk, and maximizing returns

### Uniform Prudent Management of Institutional Funds Act - UPMIFA

Federally established in 2006

Updates the Uniform Management of Institutional Funds Act (1972)

Applies to endowments, foundations, and trusts held for charitable purposes

Investment obligations tie directly back to UPIA, but UPMIFA also addresses prudent expenditure of funds

Outlines rules for prudent expenditure of appreciation and income, removes language around a historic dollar value beneath which an asset pool cannot be spent

Limits ability to alter the charitable purpose of a fund

Adopted in 49 states (Pennsylvania is the lone holdout)

Both UPIA and UPMIFA are designed to protect Trust assets from misuse and loss.

# Key Components of the Uniform Prudent Management of Institutional Funds Act

## Prudent Management and Diversification

UPMIFA requires funds be prudently managed. The overall purpose, spending requirements, and other circumstances of the Trust must be considered. Funds should be invested in a diversified manner provided investments are prudent and in accordance with the Trust's investment policies.

## Investment Policies

Written investment policies must be adopted and adhered to. Policies must include a risk management strategy, monitoring procedures, and a periodic review process.

## Financial Reporting

UPMIFA includes provisions for financial reporting by nonprofit organizations, including an annual financial reporting requirement.

## Annual Independent Audit

An independent audit must be conducted on an annual basis.

## Spending Policies

UPMIFA permits a broad range of spending policies but does require the establishment of a clear spending policy that is periodically reviewed and updated.

## Ongoing Training

Both Trustees and staff should receive periodic training regarding UPMIFA



# Who is a Fiduciary?

A fiduciary is any person **to the extent** they:

- 1 Exercise any discretionary authority or control respecting the **Trust's management** or exercises any authority or control over the **management or disposition of the Trust's assets**;
- 2 **Render investment advice for a fee** or other compensation, directly or indirectly, with respect to moneys or other property of a trust, or has any authority or responsibility to do so; or
- 3 Have any **discretionary authority or discretionary responsibility** in the **administration** of the trust.

## Typical tasks include:

- Appointing fiduciaries and delegating fiduciary and other trust-related duties and responsibilities (board / board-level committee)
- Selecting / replacing service providers (committee)
- Determining investment policy and documenting decisions and their rationale (committee or board / board-level committee)
- Selecting / managing / replacing trust investments (committee or trust staff / administrators)
- Providing investment advisory services for a fee (investment adviser)
- Approving payment of fees and expenses from trust assets (committee)
- Interpreting / construing trust provisions (trust staff / administrators)

# Who Are the Fiduciaries?

## The Test of Determining Fiduciary Status

The test for determining fiduciary status is a functional one.

To the extent a person or entity has, or may exercise, any of the functions described earlier, the person or entity will be deemed to be a fiduciary.

The courts may differ as to whether certain actions constitute fiduciary duties—e.g., calculating pension benefits was considered a fiduciary duty in one court case, but not in another.

A party may be a fiduciary regardless of who appointed them to serve in the role (i.e. APFC and DNR were appointed by statute, not the Board).

Board of Trustees	Yes, even if it appoints third-party fiduciaries
Underlying Subcommittees	Yes
Investment Managers (DOR/APFC)	Yes
Land/Natural Resource Managers (DNR/TLO)	Yes
Staff / Officers / Employees	Maybe
Investment Consultants	Probably
Attorneys	Probably not
Auditors	Probably not
Custodian Banks	Yes (in some instances)

**Who decides who is a fiduciary and who is not?  
Likely a judge or regulator.**

# Four Central Duties of a Fiduciary under UPMIFA

## Duty of Loyalty

**Fiduciaries are to act solely in the interest of Trust beneficiaries (both current and future) for the exclusive purpose of:**

- Providing benefits for participants and their beneficiaries
- Defraying reasonable expenses of administering the Trust

**Fiduciaries shall avoid conflicts of interest and ensure personal or professional interests do not compromise decision-making**

## Duty of Care

**Fiduciaries must act with “the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of a like enterprise with like aims.”**

1) Give “appropriate consideration” to facts and circumstances known at that time, including the role of the investment in the total portfolio, and (2) act accordingly.

Prudence requires that a process is followed and documented.

## Duty to Follow Trust Documents

**The fiduciary must discharge her / his duties**

*“In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances...”*

The investment policy statement should outline both an investment program and an expenditure model that takes into account the overall purpose of the Trust, general economic conditions, the possible impact of inflation, the expected return of investments, and other resources of the institution

## Duty to Obedience

**Fiduciaries must ensure the organization adheres to its mission and complies with all applicable laws and regulations, including donor intent and spending rules**

## Recommendations for Fiduciary Conduct

- 1 Prepare and periodically review written investment policies
- 2 Diversify portfolio assets with regards to the specific risk/return objectives
- 3 Use qualified professional managers (prudent experts) to make investment decisions
- 4 Control and account for all investment fees and expenses
- 5 Monitor the activities of all money managers and service providers
- 6 Document the process used to derive investment decisions
- 7 Engage expert legal counsel

## Recommendations for Fiduciary Conduct

### The Essentials

- Strong governance structure: people, processes and monitoring
- Governance documents and policy statements
- Documented procedures
- Confirm appropriate service providers and any related indemnifications

### Annually

- Provider review meetings
- Financial strategy execution and budgeting; funding strategy updates
- Review of policies and procedures

### Quarterly

- Committee meetings (finance, resource management, etc.)
- Trend and legislative updates (potentially more frequently)
- Monitor / measure investment and administrative performance if applicable

### Every 2-5 Years or Event-driven

- Fiduciary training
- Investment management fee review
- Asset/spending or asset allocation Study



- Fiduciaries are entrusted with acting in the interests of the trust or Trust's beneficiaries, which can feel like a big responsibility
- In general, **process is the friend of fiduciaries** and the establishment of sound, documented processes to follow helps ensure all duties are properly fulfilled
- The adoption of a clear spending policy, preparation of annual financial reports, and an annual financial audit are all important fiduciary steps
- Regulations change, so stay informed to ensure fiduciaries are fulfilling their obligations and adhering to practices that protect the organization from potential litigation – seek legal advice and update documents as necessary

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