

Reminder: Your Fiduciary Duties as a Plan Administrator of a Group Health Plan Include Reviewing Fee Disclosures

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PRACTICES Employee Benefits and Executive Compensation

Plan administrators of group health plans should be aware of their obligations under ERISA Section 408(b)(2), which was amended by the Consolidation Appropriations Act of 2021 to expand fee disclosure responsibilities that were formerly reserved for retirement plan service providers. These rules also apply to brokers and consultants to group health plans. The plan administrator or other responsible plan fiduciary under ERISA must review and analyze the fee disclosures from their health plan brokers and consultants to evaluate potential conflicts of interest and ensure that the costs of service are “reasonable”, as determined under ERISA’s standards.

We previously reported on the *Lewandowski v. Johnson & Johnson* class action lawsuit [here](#), which alleges breaches of fiduciary duties relating to excessive fees. The complaint argues that “[f]iduciaries must make a diligent effort to . . . seek the lowest level of costs for the services to be provided, and continuously monitor plan expenses to ensure that they remain reasonable under the circumstances. Fiduciaries also cannot ignore the power their plans wield to obtain favorable rates. Put simply, wasting beneficiaries’ money is imprudent.” This case is ongoing and may establish a framework for other class action suits against plan administrators of group health plans.

Plan administrators may also consider retirement plan fee disclosure litigation as illustrative of their fiduciary duties surrounding fee disclosures for health plan brokers and consultants, including the duties to monitor recordkeeping costs, negotiate rebates, and prudently select and retain investment options.

To mitigate risk, a plan administrator or other responsible plan fiduciary should maintain and document a prudent fiduciary process when evaluating fee disclosures, which includes benchmarking with industry standards.