

## Group Health Plan Fiduciary Litigation on the Rise

The Employee Retirement Income Security Act of 1974 (ERISA) includes strict standards of conduct for fiduciaries, those who manage employee benefit plans and their assets. ERISA requires fiduciaries to discharge their duties regarding employee benefit plans:

- Solely in the interest of plan participants and beneficiaries;
- For the exclusive purpose of providing plan benefits or for defraying reasonable expenses of plan administration; and
- With the care, skill, prudence and diligence that a prudent person in similar circumstances would use.

The duty to act prudently is one of a fiduciary's central responsibilities.

Enforcement of ERISA's strict standards of fiduciary conduct has traditionally been reserved for retirement plan sponsors.

However, a new class action lawsuit highlights the importance of employers' adherence to their fiduciary duties when managing their group health plans. The lawsuit against Johnson & Johnson alleges the company violated its ERISA fiduciary duties by mismanaging its prescription drug benefit, which cost the health plan and participants millions of dollars. It serves as a reminder to employers that they must prudently select and monitor plan service providers, such as pharmacy benefit managers (PBMs).

Although it is the first case of its kind, more fiduciary litigation involving the management of prescription drug benefits is expected as the PBM industry faces increasing scrutiny and new transparency laws provide employees with more information regarding health care costs.

## PCORI Fees Are Due by July 31, 2024

The Affordable Care Act requires employers with self-funded health plans and health insurance issuers to pay Patient-Centered Outcomes Research Institute fees (PCORI fees). The fees are reported and paid annually using [IRS Form 720](#), the Quarterly Federal Excise Tax Return.

Form 720 and full payment of the PCORI fees are due by July 31 of each year and generally covers plan years that end during the preceding calendar year. For plan years ending in 2023, the PCORI fees are due by July 31, 2024.

In general, the PCORI fees are assessed, collected and enforced similarly to taxes. The PCORI fee amount is based on the average number of individuals covered under the plan.

The IRS requires employers with self-funded health plans to use one of three alternative methods to determine the average number of individuals covered under the plan for a plan year: the actual count method, the snapshot method or the Form 5500 method. That number is then multiplied by the applicable rate for that tax year (\$3 for plan years ending on or after Oct. 1, 2022, and before Oct. 1, 2023, or \$3.22 for plan years ending on or after Oct. 1, 2023, and before Oct. 1, 2024).

The IRS provides helpful resources regarding PCORI fees, including a [chart](#) on how the fees apply to specific types of health coverage or arrangements.