# Health and Welfare Plan Grab Bag

Feb 04, 2025

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There have been a number of legal developments in recent months, from newly passed laws to recent court rulings, that have a direct impact on employer group health plans. Below is a handful of some of the more recent legal developments benefitting employer group health plan sponsors.

## Affordable Care Act Reporting

Since 2015, the Affordable Care Act (ACA) has required insurers and group health plans to file Form 1095 with the IRS and distribute it to employees. This form (along with Form 1094, the transmittal form for IRS filing) reports whether an employer offered affordable minimum essential coverage to its employees, as required under the ACA. Failing to comply with this requirement resulted in fairly substantial penalties, including double penalties when both failing to file and failing to distribute the forms occurred. Form 1095 was required to be delivered to employees by March 2 of each year.

At the end of 2024, President Biden signed the Paperwork Burden Reduction Act into law. This law eliminated the requirement that employers distribute Form 1095 to employees, except to the extent an employee requests a copy. To avail themselves of this new rule, employers must provide a "clear, conspicuous, and accessible notice" to employees informing them that they can request a copy of the Form 1095. If an employee requests the Form 1095, employers must also provide it by the later of (i) January 31, or (ii) 30 days after the request. This change relates to 2024 Forms 1095 and beyond. The IRS may publish regulations relating to certain details that remain unclear, such as the time and manner of the notice to employees. Note: Reporting to the IRS is still required.

## Other ACA Reporting Changes

A second law passed by President Biden at the end of 2024, the Employer Reporting Improvement Act (EIRA), also made some beneficial changes to ACA reporting rules. The following is a summary of the four main changes:


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- Employers can now officially substitute a date of birth for an employee's tax identification number for purposes of ACA reporting if the Taxpayer Identification Number (TIN) is not available.
- The EIRA codified IRS electronic delivery rules allowing employers to furnish Forms 1095 to employees electronically when employees consent to electronic delivery.
- Employers now have 90 days (instead of 30) to respond to IRS penalty letters for alleged employer shared responsibility violations under the ACA (Letter 226-J). This applies to letters sent on or after January 1, 2025.
- Finally, and most importantly, the EIRA establishes a six-year statute of limitations for penalty assessments under the ACA's employer shared responsibility rules. The statute of limitations begins to run on the later of (i) the due date of the filing of an employer's Form 1094-C and 1095-C with the IRS, or (ii) the date such returns were actually filed. Prior to this law, the IRS took the position that there was not a statute of limitations for these penalties. This change applies to returns that are due after December 31, 2024 (*e.*, it does not apply retroactively).

## Johnson & Johnson Case Dismissed

In January of last year, Johnson & Johnson (J&J) was sued in its capacity as an employer and plan sponsor of a group health plan. The class action was brought by a former employee who alleged that J&J breached its fiduciary duty to plan participants when it did not take proper measures to ensure its prescription drug plan costs were reasonable, as well as failing to monitor its pharmacy benefits manager (PBM). Specifically, the plaintiff alleged that J&J overpaid for prescription drugs through its PBM Express Scripts, that overpayments led to higher premiums and out-of-pocket costs for participants, and that mismanagement of the plan harmed participants and beneficiaries, among other things. As a result, the plaintiff contended that she paid too much for: (i) generic specialty drugs, which typically are only available at hospitals or doctor's offices or through a specialty pharmacy, and (ii) generic non-


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specialty drugs and identified specific generic drugs that were available at cheaper prices at certain pharmacies, even to individuals without insurance. One egregious example that the complaint focused on was the cost of a drug used to treat multiple sclerosis, for which the plan charged $10,239.69 for a 90-day supply, when the same drug was available at pharmacies, without insurance, for anywhere between $40 and $75. The case, and others like it, was heavily fact-specific, but was a sign to employers that the plaintiffs' bar may now be adapting its retirement plan fee suit strategy to group health plans.

In good news for the employer plans community, the case was dismissed on January 24, 2025, by the U.S. District Court for the District of New Jersey. Dismissing Employee Retirement Income Security Act (ERISA) fiduciary breach claims for lack of Article III standing, the court said the plaintiff's claims that she paid too much in premiums, copays, and coinsurance and that her wages were adversely impacted by prescription drug costs were speculative "at best" and that her allegations regarding higher out-of-pocket costs for prescription drugs were not redressable. To establish Article III standing, plaintiffs must show that (i) they suffered an injury-in-fact, (ii) the injury was likely caused by the defendants' alleged ERISA violations, and (iii) the injury would likely be redressed by judicial relief.

While this result is excellent news for employers, because of the highly fact-specific nature of this case and others like it, employers will still want to focus a bit more on group health plans to ensure fees are reasonable and that sufficient diligence and monitoring is undertaken with respect to plan vendors. Plan sponsors, just like in the retirement plan context, have fiduciary duties to employees with respect to group health plans, so the J&J case should serve as a wake-up call to plan sponsors or fiduciaries to ensure a prudent process is undertaken with respect to such plans.

Contact the author or any member of Frost Brown Todd's Employee Benefits & ERISA team if you have questions or need assistance developing updating your organization's retirement, health and other employee benefits plans.

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