

Issue Brief: Another Fiduciary Lawsuit: Are You Next?

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Introduction

JPMorgan Chase & Co. has recently become the latest major corporation targeted in a class-action lawsuit filed by employees alleging mismanagement of their prescription drug benefits. The suit claims JPMorgan, through its Pharmacy Benefit Manager (PBM), CVS Health, significantly overpaid for prescription medications, inflating costs for both the health plan and its employees. Similar litigation against Johnson & Johnson (J&J) and Wells Fargo underscores the growing fiduciary risks facing employers managing health care plans.

Key Topics: Common Patterns in Recent Litigation:

All three lawsuits share allegations that employers breached fiduciary duties under the Employee Retirement Income Security Act (ERISA) by inadequately negotiating PBM contracts and failing to properly manage prescription drug costs. Employees across these cases contend they incurred excessive prescription expenses due to inflated pricing structures. Certain high-cost prescription drugs are repeatedly highlighted as examples of widespread fiduciary mismanagement.

In the first two cases filed – against J&J and Wells Fargo – courts initially dismissed the cases, finding that the plaintiffs do not have standing to file a suit. The courts separately found that the plaintiffs failed to demonstrate that they were directly harmed by the employers’ alleged mismanagement of PBM contracts. However, in both cases, the courts left open the opportunity for the plaintiffs to appeal the ruling or refile their litigation. In fact, the plaintiffs recently filed a Second Amended Complaint against J&J.

The Role and Risk of PBMs

PBMs act as intermediaries, negotiating drug prices and managing formularies on behalf of employer-sponsored plans. While PBMs are crucial to managing drug costs, many practices, including opaque pricing models, retention of rebates, and artificially inflated reimbursement rates frequently prioritize PBM profits over employers’ and participants’ interests. This lack of transparency significantly increases fiduciary risks for employers, especially under evolving legislation such as the Consolidated Appropriations Act, 2021 (CAA), which mandates full cost transparency.

2 Responsibilities and Best Practices for Fiduciaries:

ERISA places stringent fiduciary responsibilities on plan sponsors to act prudently and solely in participants' interests. Plan sponsors must ensure all plan expenses, including PBM fees, are transparent, necessary, and reasonable. Proper fiduciary practices require proactive vetting, clear conflict-free criteria in PBM selection, and ongoing performance monitoring. Failure to diligently perform these duties carries substantial financial and reputational risks.

Actionable Strategies to Mitigate Fiduciary Liability: Employers can significantly reduce liability through strategic fiduciary practices, including:

- **Recognize Fiduciary Status:** Employers must acknowledge their fiduciary role. Brokers, TPAs, and PBMs generally do not share fiduciary responsibility.
- **Establish a Fiduciary Committee:** Form an internal fiduciary committee tasked with regular oversight and evaluation of PBM performance and contractual compliance.
- **Invest in Fiduciary Training:** Training fiduciaries enhances governance, ensures compliance, and safeguards participants' interests.
- **Comply with CAA Regulations:** Remove any "gag clauses" from contracts and obtain complete disclosures from PBMs on pricing, fees, and rebates.
- **Implement Conflict-Free RFP Processes:** Engage independent advisors to manage the PBM RFP process, ensuring impartial evaluation and selection aligned with fiduciary standards.
- **Understand Contracts:** Carefully negotiate and review PBM contracts to identify and remove terms that may lead to hidden fees or conflicts of interest.
- **Continuous Monitoring and Auditing:** Regularly audit PBM practices for pricing accuracy, rebate transparency, and contract adherence. The CAA underscores the need for proactive, continuous oversight to mitigate fiduciary risk.

Conclusion:

Litigation surrounding PBM mismanagement continues to escalate, highlighting the necessity for employers to actively manage their health care and prescription benefit programs. Adopting a strategic, fiduciary-compliant approach emphasizing transparency, cost management, and regulatory compliance protects organizations from costly legal repercussions, safeguards participants' interests, and builds stakeholder trust. Employers who implement these proactive strategies significantly reduce their fiduciary risks and position themselves confidently amid growing scrutiny.

Additional Materials

1. [Mental Health Parity Compliance Toolkit for Employers/Healthcare Purchasers](#)
2. [Beyond Hospital Transparency: Getting to Fair Price](#)
3. [PBM Vendor Engagement Template](#)
4. [Behavioral Health Vendor Engagement Template](#)
5. [CAA Survey Results Overview](#)