

Weekly Digest

• March 26, 2024 •



EMPLOYEE
BENEFITS

Federal Court Approves \$1 Million Settlement in Class Action Involving Threatening and Misleading COBRA Notice

"The former employees filed a class action lawsuit against the employer, claiming that in its COBRA notice, the employer attempted to intimidate them into not electing COBRA coverage by warning them that submitting incomplete information could result in civil and criminal penalties. The notice allegedly also referred to a \$50 IRS penalty for each failure to provide a correct tax identification number for a covered individual." [Full Article](#)

Hall Benefits Law, LLC

In This Digest

PAGE 1

Federal Court Approves \$1 Million Settlement in Class Action Involving Threatening and Misleading COBRA Notice

By, Hall Benefits Law, LLC

A Rare Instance of Bipartisanship: Congress' Unified Approach to PBM Reform

By, Faegre Drinker, via Innovations Magazine

PAGE 2

Revised OCR Guidance Provides New Examples, but Raises More Questions, Regarding Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates

By, Epstein Becker & Green P.C.

Group Health Plan ACA Reporting – The 2024 Edition

By, Spencer Fane

The Cost Of Drugs: Johnson & Johnson Lawsuit Could Signal the Opening of a New Area of ERISA Class Action Litigation Against Health Plan Fiduciaries

By, Tucker Huss, APC

Another Class Action Alleging Discriminatory Coverage of Fertility Treatment Proceeds to Trial

By, Thomson Reuters / EBIA



A Rare Instance of Bipartisanship: Congress' Unified Approach to PBM Reform

"Core themes of these pieces of legislation are increasing transparency of PBM operations and prohibitions or limitations on the use of spread pricing, a technique where PBMs could profit from the margin between what health plans are charged and what is paid to pharmacies, potentially incentivizing formularies to favor more costly drugs. A deep dive into these significant bills will help us understand the potential landscape of PBM regulation and its far-reaching implications for the health care system." [Full Article](#)

Faegre Drinker, via Innovations Magazine

Page 1

Revised OCR Guidance Provides New Examples, but Raises More Questions, Regarding Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates

"OCR has now opined that the information collected may not be PHI depending on the individual user's reason for visiting a Regulated Entity's unauthenticated pages on a website or mobile app. The **updated guidance** does not address how an individual's reason for visiting its website can be discerned at the point of collection through these automated electronic processes. Nor does the guidance expressly state that consideration of the reason for the individual's visit may be considered by OCR in its enforcement efforts." [Full Article](#)

Epstein Becker & Green P.C.



The Cost Of Drugs: Johnson & Johnson Lawsuit Could Signal the Opening of a New Area of ERISA Class Action Litigation Against Health Plan Fiduciaries

"Lewandowski reinforces how important it is for health plan fiduciaries to pay close attention to their plans' costs and fees. Retirement plan 'excessive fee' litigation has reshaped the entire retirement industry -- from the pricing of investments to compensation paid to service providers to insurance and legal costs. If Lewandowski gains any traction and paves a new path of ERISA fiduciary litigation, we could see the same seismic disruption in the health plan industry." [Full Article](#)

Tucker Huss, APC

Group Health Plan ACA Reporting – The 2024 Edition

"Employers (or other plan sponsors) who missed the March 1 deadline should provide the individual returns as soon as possible. Corrections made within 30 days of the deadline will result in reduced penalty amounts, and corrections made after the 30-day deadline but before August 1 are subject to increased penalty amounts that are still less than the presumptive penalty amounts that would otherwise apply." [Full Article](#)

Spencer Fane



Another Class Action Alleging Discriminatory Coverage of Fertility Treatment Proceeds to Trial

"The court concluded that the participant had adequately alleged that on its face, the plan imposed an unequal burden on same-sex couples by requiring them to incur out-of-pocket costs and provide verifiable proof of multiple cycles of donor insemination, while heterosexual couples could show infertility without cost or documentation. The court further concluded that the employer was not a necessary party to the litigation despite the administration company's argument that the employer had the final say on the benefits offered by the plan." [Full Article](#)

Thomson Reuters / EBIA

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