

## **Ads Related to Health Plan Fees Raise Questions on the Next Excessive Fee Suit Targets**

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Is a new wave of ERISA fiduciary litigation targeting group health plan sponsors on the horizon? There have already been a few examples of health plan fee cases, such as claims challenging the billing practice between insurers and their subcontractors or challenging commissions paid in connection with multi-employer plans. Recent advertisements by the class action plaintiffs' firm Schlichter Bogard soliciting current participants in particular companies' health plans relating to the fees they are being charged in those plans suggest the trend is continuing.

The Consolidated Appropriations Act of 2021, or CAA, created new disclosure requirements for entities providing brokerage and consulting services to ERISA-covered group health plans. The CAA amended section 408(b)(2) of ERISA to require certain service providers of group health plans to disclose specified information to a plan fiduciary, including the compensation the service provider expects to receive in service of the plan. Additionally, the CAA requires a determination of "reasonableness" for vendor fees and services for healthcare plan providers. Similar disclosure requirements enacted for defined contribution plans in 2012 kicked off the current wave of defined contribution plan fee litigation, and the CAA's new regulations prompted questions as to whether group health plans are the next targets.

Schlichter's advertisements for potential plaintiffs for this new round of litigation are yet another sign of what's to come. While nothing has been filed yet, and representatives from Schlichter have represented that they are conducting targeted investigations only, group health plan sponsors and fiduciaries should remain vigilant and review their and their service providers' compliance with section 408(b)(2)'s requirements.

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