

# Weekly Digest

• May 9, 2023 •

## Can a Telehealth-Only Plan Continue After the End of the COVID-19 Emergency?

"If the PHE ends on May 11, 2023, a calendar year telehealth-only plan could remain covered by the exemption until the end of 2023. But if the plan year is, for example, June 1-May 31, the relief applies only until the end of the current plan year on May 31, 2023; as of June 1, 2023, that plan would have to comply with the preventive services mandate and the prohibition on annual and lifetime limits." [Full Article](#)

*Thomson Reuters/EBIA*



## IRS Chief Counsel Discusses Cafeteria Plan Substantiation Rules

"The IRS Office of Chief Counsel has issued **Memorandum Number 202317020** to explain the substantiation rules for claims made under health and dependent care FSAs by means of six commonly encountered factual situations, in five of which it concludes that the plan is not a cafeteria plan and the reimbursement is not shielded from income and employment taxes." [Full Article](#)

*The Wagner Law Group*

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## **Evolving Laws and Litigation Post-Dobbs: The State of Reproductive Rights as of May 2023**

"It has been almost a year since the US Supreme Court returned the question of abortion to the states, resulting in a proliferation of legislation across the country banning, restricting, expanding, or protecting access to abortion. Employers will need to continue monitoring this area closely to ensure that their policies and benefit plans comply with state and federal requirements." [Full Article](#)

*Morgan, Lewis & Bockius LLP*



### **HIPAA Privacy Rule Changes Coming in 2023: Five Steps to Prepare**

"If HHS finalizes the Proposed Rule as written, HIPAA-covered entities and business associates must update their privacy policies and procedures, security standards, notices of privacy practices (NPP), authorization and disclosure forms, and business associate agreements, among other documents, to reflect the modifications required by the rulemaking." [Full Article](#)

*McGuireWoods*

### **Payor/Provider Convergence and What it Means for You**

"Health care providers are increasingly taking financial risk in their contracts with health insurance companies and, in turn, health insurance companies are becoming more involved in the delivery of care." [Full Article](#)

*Foley & Lardner LLP*



### **First Circuit Holds Blue Cross Was Not a Fiduciary When it Allegedly Overpaid, Reprices, and Mishandled Benefit Claims**

"The court was unpersuaded by the arguments of the Fund and its amici (including the DOL) that finding Blue Cross to be a nonfiduciary would lead to anticompetitive practices that concededly could harm plans and their participants. Thus, based on ERISA's far from pellucid statutory definition of fiduciary, the First Circuit allowed Blue Cross to evade fiduciary responsibility to the tune of \$1.4 million in plan losses caused by its medical claims pricing and payment practices." [Full Article](#)

*Kantor & Kantor LLP*