

Weekly Digest

• June 7, 2023 •



EMPLOYEE
BENEFITS

Can the HIPAA Privacy and Security Official Position Be Held by a Third Party?

“Although there is language in the preamble to the privacy rule that seems to assume that the privacy official will be an employee of the covered entity, there is no explicit requirement to that effect. And because some covered entities (e.g., most group health plans) will not have employees, the privacy official's duties will have to be performed by a third party (for a group health plan, usually an employee of the plan sponsor).” [Full Article](#)

Thomson Reuters / EBIA



Can Your Plan Clear Mental Health Parity Compliance Hurdles?

“Hidden Hurdle 1: Equality does not equal parity. Hidden hurdle 2: When you don't (and can't) know how your plan is run. Hidden hurdle 3: Didn't we exclude that?” [Full Article](#)

International Foundation of Employee Benefits Plans [IFEBP]

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Seventh Circuit Affirms Plan Sponsor’s Discretion for Severance Benefits

“The decision affirms that, if the plan so provides, discretionary eligibility criteria for severance benefits is permissible under ERISA. However, plan sponsors should be aware that the exercise of discretion in certain ways can cause issues under other federal laws intended to protect against discrimination and in the context of a voluntary severance plan, the exercise of discretion with respect to eligibility could negate the voluntary nature of the plan.” [Full Article](#)

Groom Law Group



Denials of Health Insurance Claims Are Rising — and Getting Weirder

“Companies appear increasingly likely to employ computer algorithms or people with little relevant experience to issue rapid-fire denials of claims. A job title at one company was 'denial nurse.' The ACA tasked HHS with monitoring denials both by health plans on the Obamacare marketplace and those offered through employers and insurers.” [Full Article](#)

KFF Health News

First Gag Clause Attestations Due December 31, 2023 - What Groups Health Plan Sponsors Need to Know

“Plan sponsors and carriers of fully insured plans are both required to submit a Gag Clause Prohibition Compliance Attestation. **FAQs Part 57** provide that if the insurance carrier submits the GCPA on behalf of the plan, the Departments will consider the plan (and insurer) compliant. Sponsors of fully insured plans, however, should confirm that the carrier will be submitting the GCPA on the plan's behalf.” [Full Article](#)

Hunton Andrews Kurth LLP



Employee Benefits Plans: Applying the ERISA Controlled Group and Affiliated Service Group Rules in the Health Care Industry

“The friendly-PC model involves a professional service corporation conducting a medical practice in affiliation with a management services organization. Although the friendly-PC model may be a solution to the corporate practice of medicine doctrine, it can create unintended consequences for employee benefit plans sponsored by the PSC and MSO.” [Full Article](#)

Foley & Lardner LLP