

Weekly Digest

• August 1, 2023 •

Proposed Mental Health Parity Regulations Arrive: Key Changes for Plan Sponsors

"As proposed, a plan will need to assess the expected dollar amount of all plan payments for medical/surgical benefits in the classification to determine whether the NQTL applies to 'substantially all' medical/surgical benefits, and then identify the most common or frequent variation of the NQTL for purposes of determining whether it is 'predominant.'" [Full Article](#)

Proskauer Rose LLP



Health Care Organizations Support Government's Effort on Preventive Services

"A diverse set of advocates, academics, organizations, and participants in the health care system filed amicus briefs in support of the government and urged the Fifth Circuit to reverse the lower court's decision. Brief overviews of the amicus briefs are provided in this article." [Full Article](#)

Health Affairs Forefront

EMPLOYEE
BENEFITS

In This Digest

PAGE 1



Proposed Mental Health Parity Regulations Arrive: Key Changes for Plan Sponsors

By, Proskauer Rose LLP

Health Care Organizations Support Government's Effort on Preventive Services

By, Health Affairs Forefront

PAGE 2

Employer Considerations Concerning the HIPAA Special Enrollment Rule Temporary Extension

By, Kilpatrick Townsend & Stockton LLP

IRS Issues Guidance on Expenses Related to COVID-19 and Preventive Care

By, Miller Johnson Snell & Cummiskey, P.L.C.

Third Circuit Affirms Judgement on ERISA Retaliation Claim

By, Roberts Disability Law P.C.

Employer's Lack of COBRA Diligence was not Intentional Infliction of Emotional Distress

By, Thomson Reuters / EBIA

Employer Considerations Concerning the HIPAA Special Enrollment Rule Temporary Extension

"CMS announced a temporary special enrollment period on HealthCare.gov, through which individuals who lose Medicaid or CHIP coverage and come to HealthCare.gov anytime between March 31, 2023 and July 31, 2024 will be able to enroll." [Full Article](#)

Kilpatrick Townsend & Stockton LLP



IRS Issues Guidance on Expenses Related to COVID-19 and Preventive Care

"For plan years ending after December 31, 2024, a high-deductible health plan will no longer be permitted to provide coverage for COVID-19 testing and treatment under the HDHP before the minimum HDHP deductible is met without jeopardizing a participant's HSA eligibility. **Notice 2023-37** clarified that the preventive care safe harbor does not include screening (i.e., testing) for COVID-19, effective as of June 23, 2023. This clarification will not be relevant for HDHPs/HSAs until the first plan year ending after December 31, 2024." [Full Article](#)

Miller Johnson Snell & Cummisky P.L.C

Third Circuit Affirms Judgement on ERISA Retaliation Claim

"The court found that the evidence supported the district court's finding that the Company's firing of Plaintiff was motivated by Plaintiff's past and anticipated future use of ERISA health benefits. The Company's healthcare invoices had Plaintiff's hip replacement surgery costs highlighted, and though anonymized, it was not difficult for someone in the Company to identify Plaintiff and his expenses." [Full Article](#)

Roberts Disability Law P.C.



Employer's Lack of COBRA Diligence Was Not Intentional Infliction of Emotional Distress

"Courts have repeatedly held that damages for COBRA violations are generally limited to unreimbursed medical expenses less applicable premiums and deductibles. Neither COBRA nor ERISA provides for extra-contractual or consequential damages such as recovery for emotional distress." [Full Article](#)

Thomson Reuters / EBIA

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