

# Weekly Digest

• September 26, 2023 •

EMPLOYEE  
BENEFITS

## Action Steps Health Parity Should Take Now in Response to New DOL Guidance on Mental Health Parity

"The Departments have consistently highlighted certain types of plan exclusions or limitations as problematic or out of compliance and addressed these areas again in both the 2023 MHPAEA Report to Congress and the Proposed Rules. Plan sponsors should review their plans carefully for these red flags and should also consider performing a more general MHPAEA compliance review of their group health plans, with an emphasis on the Department's six areas of focus." [Full Article](#)

*Foley & Lardner LLP*



## COBRA Notice Litigation Update: Recent Decision Signals Some Skepticism of Plaintiff's Claims

"Despite the sheer volume of COBRA notice cases, courts have issued relatively little guidance on the merits of the plaintiffs' claims. Based on the decisions and proceedings to date, this article describes some trends indicating that, although COBRA notice litigation may present a risk for plan sponsors, there are also multiple potential merits and class-based defenses available to defendants." [Full Article](#)

*Groom Law Group*

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## Save Billions or Stick with Humira? Drug Brokers Steer Americans to the More Costly Choice

"For real competition to take hold, the big pharmacy benefit managers, or PBMs, the companies that negotiate prices and set the prescription drug menu for 80% of insured patients in the United States, would have to position the new drugs favorably in health plans. They haven't, though the logic for doing so seems plain." [Full Article](#)

*KFF Health News*



## Managing Increasing Health and Welfare Fiduciary Risks

"Take action now to stave off the pending surge in class action litigation against health and welfare plan sponsors and fiduciaries. Plaintiffs' firms are actively looking for potential employee plaintiffs who participate in group health plans. Manage risks by establishing a health and welfare plan fiduciary committee to conduct formal, well-documented processes to monitor health plan activities and service provider performance and fees." [Full Article](#)

*Nixon Peabody*

## Gag Clause Attestations Due December 31, 2023

"Under the Consolidated Appropriations Act of 2021 (CAA), group health plans and health insurance issuers are prohibited from entering into agreements with service providers restricting certain information that the plan may make available to another party. This information includes [1] provider-specific cost or quality information sharing with plan members or [2] claims data (including individual claims pricing) sharing with plan sponsors (and their service providers)." [Full Article](#)

*Graydon Head & Ritchey LLP*



## One Year Later, Where Are the 'Transparency in Coverage' Compliance Studies

"The authors posit that the lack of compliance monitoring is not for lack of interest but rather because of the complexity of the landscape to which the regulation applies. As such, in this piece, we lay the groundwork for compliance studies by outlining the agencies responsible for enforcing compliance with the TiC rule, delineating the universe of entities that are required to comply with it, and discussing how compliance might be assessed." [Full Article](#)

*Health Affairs Forefront*

**Simplify Compliance**