

# Weekly Digest

• April 28, 2023 •

EMPLOYEE  
BENEFITS

## Departments Issue Guidance on Preventive Services Under the ACA Following the *Braidwood* Decision

"The *Braidwood* decision only applies to preventive care requirements receiving an "A" or "B" rating from the United States Preventive Services Task Force (USPSTF) *on or after* March 23, 2010. Preventive care requirements receiving an A or B rating from the USPSTF *before* March 23, 2010, are not affected by the ruling, which means plans and issuers must still cover those preventive care services without cost-sharing." [Full Article](#)

**Bradley Arant Boult Cummings LLP**



## New Guidance on Gag Clause Attestation

"To ensure compliance with the Gag Clause Prohibition, plans must annually submit an attestation of compliance with the law to the Departments. The Departments have now launched a website for submitting attestations and issued instructions, a system user manual, and a Reporting Entity Excel Template for plans and issuers to submit the required Compliance Attestation." [Full Article](#)

**Seyfarth Shaw LLP**

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## Courts Continue to Scrutinize ERISA Health Plan Benefit Denial Letters

"In asking the administrator to ensure the denial letters accurately reflect the administrator record, the court in *Brian J.* is requiring the administrator to refrain from standard, stock language and draft a more personalized explanation for denying benefits." [Full Article](#)

*Troutman Pepper, via Lexology*



### IRS Clarifies Ability to Reimburse Certain Programs Under HSAs, FSAs and HRAs

"Programs to treat a drug-related substance use disorder, programs to treat an alcohol use disorder, and smoking cessation programs qualify as medical care because the programs are considered treatment for a disease. However, therapy, nutritional counseling, and weight-loss programs will only be considered medical care if used to treat a specific disease (e.g. obesity). Programs for general health or wellbeing will not qualify as medical care." [Full Article](#)

*Foley & Lardner LLP*

### Court Rejects Mental Health Parity Claim for Wilderness Therapy Coverage Denial

"Noting that a successful MHPAEA claim requires a participant to plead facts showing a disparity in the plan's treatment of MH/SUD and medical/surgical benefits, the court concluded that the participant's allegation was unsupported and contradicted plan language expressly applying the exclusion to both types of benefits." [Full Article](#)

*Thomson Reuters/EBIA*



### The Disconnect: More View Health Savings Accounts (HSAs) as Investment Accounts Than Use Them This Way

"The majority (62 percent) of health savings account (HSA) accountholders reported that they are using the account to pay for out-of-pocket expenses. And most (69 percent) viewed the HSA as a savings account." [Full Article](#)

*Employee Benefit Research Institute [EBRI]*