

# Weekly Digest

• June 9, 2023 •

## 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 .... 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

"What’s approved or denied can be based on an insurer’s shifting contracts with drug and device manufacturers rather than optimal patient treatment .... Thirteen years after the passage of the ACA, perhaps it is time for the mandated investigation and enforcement to begin. " [Full Article](#)

**KFF Health News**

## First Gag Clause Attestations Due December 31, 2023 - What Group 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. The Tri-Agency FAQs, however, provide that if the insurance carrier submits the GCPCA 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 GCPCA 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

"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**