

Weekly Digest

• August 17, 2023 •

Better Hide the Wine... Employer Considerations as the DOL Doubles Down on Mental Health Parity Compliance in New Proposed Regulations

"Sponsors of self-insured plans may want to: [1] Confirm that their TPA will make the necessary changes to their plan's NQTLs based on the potential heightened requirements once final regulations are issued. [2] Confirm that their TPA will retain and evaluate the necessary data regarding NQTLs and network adequacy once guidance is finalized. [3] Confirm that their TPA is preparing the required comparative analyses in a manner consistent with the proposed regulations. [4] Independently review any NQTL comparative analyses that have been or are prepared. [5] Negotiate contractual protection in the event the TPA's NQTL comparative analyses are determined to be deficient or the TPA's application of NQTLs is determined to be impermissible." [Full Article](#)

Holland & Hart LLP

Excessive Fee Litigation Spreads to Health Plans

"Excessive fee litigation is no longer confined to defined contribution plans. In recent months, plan sponsors of self-funded health plans have filed three cases against Aetna, Elevance, Inc. (formerly known as Anthem, Inc.), and Blue Cross Blue Shield of Massachusetts in their capacities as third-party administrators ("TPAs") under similar theories of liability." [Full Article](#)

Davis Wright Tremaine LLP

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KFF Health Tracking Poll July 2023: The Public’s Views of New Prescription Weight Loss Drugs and Prescription Drug Costs

"While there is overall interest in taking a prescription weight loss drug... Most adults (80%) say that insurance companies should cover the cost of weight loss drugs for adults who are overweight or obese, while half of adults (53%) say insurance should cover the cost of these drugs for anyone who wants them to lose weight." [Full Article](#)

Henry J. Kaiser Family Foundation



CMS Recommends Extension of Special Enrollment for Individuals Losing Medicaid and CHIP

"There is no legal basis upon which CMS can rely in requesting this voluntary action by employers. In effect, CMS is asking employers to take this action because it believes that it is the "right thing to do," in light of the "complex transition" (discussed more fully below) "and the importance of maintaining life-saving coverage for employees and their families." From an ERISA standpoint, an employer wanting to implement this CMS recommendation would need to amend its plan." [Full Article](#)

The Wagner Law Group

States Continue Expansion of PBM Regulation

"More than half the states have enacted PBM laws in the last three years – some of which specifically impact group health plans, such as Colorado, Oregon, New Mexico, Florida, North Carolina, and Oklahoma. Below we outline the most common provisions in these laws that could impact plans, using laws in Oklahoma, North Carolina and Florida as examples of state laws that have been adopted or are being considered by state legislatures." [Full Article](#)

Groom Law Group



Preparing for Health Plan Anti-Gag Clause Attestation

"The first annual attestation is due December 31 of this year, and employers should take the following steps to prepare: [1] Ensure that contracts with health insurance TPAs and insurers do not contain prohibited provisions. [2] Confirm if your plan's insurer or TPA is submitting the GCPA on behalf of the plan." [Full Article](#)

Warner Norcross & Judd LLP