

# Weekly Digest

• October 9, 2024 •

EMPLOYEE  
BENEFITS

## Departments Release Final Mental Health Parity Rule

"The Final Rule helpfully clarified that plans and issuers are not prohibited from performing and documenting a comparative analysis at the issuer or TPA level. However, to the extent that relevant data exists at the plan level and measures access to MH/SUD benefits in a different manner from data at the issuer or TPA level, the comparative analysis must account for that data." [Full Article](#)

*Winston & Strawn LLP*



## FTC Sues Pharmacy Benefit Managers Over "Artificially Inflated" Insulin Prices

"According to a July 9 interim staff report chronicling the FTC's two-year investigation into the industry, the three PBMs named in the complaint handle nearly 80% of prescription drug claims in the United States, covering over 270 million people. Express Scripts sued the FTC in Missouri federal court last week to compel the agency to withdraw the report, which it claims is 'false and defamatory.'" [Full Article](#)

*Paul, Weiss, Rifkind,  
Wharton & Garrison LLP*

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## Recent Lawsuits Target Health Plan Premium Surcharges Based on Tobacco Use

"There is a new series of putative class action lawsuits in which the plaintiffs allege that employers that sponsor self-funded health plans with health plan premium surcharges related to tobacco use or vaccination status violate the HIPAA non-discrimination requirement notwithstanding the exception for 'outcome-based wellness programs' that provides a basis for plans to apply such surcharges." [Full Article](#)

**Groom Law Group**



## Reproductive Health Information Protections Afforded by New HIPAA Privacy Guidance

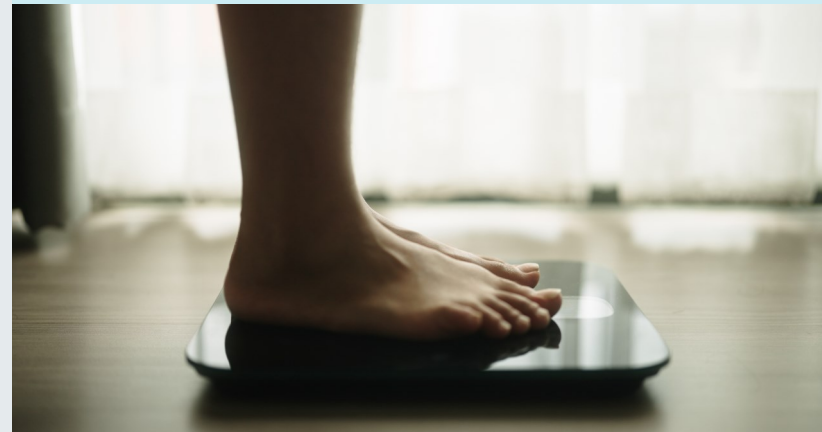
"This restriction is purpose based, meaning it doesn't prohibit the use and disclosure of this type of PHI for all purposes, but instead prohibits uses and disclosures for the limited purposes of identifying an individual for criminal or civil liability or administrative investigation. Covered entities can still use and disclose this information for other permitted purposes, subject to the general HIPAA Privacy Rule requirements." [Full Article](#)

**Faegre Drinker Biddle & Reath LLP**

## The ERISA Edit: Weight Loss Drug Exclusions Targeted Under ACA Anti-Discrimination Provision

"The plaintiff asserts that 'Anthem discriminates on the basis of disability against enrollees with obesity by designing and administering an exclusion of all coverage for medically necessary prescription medications to treat their diagnosed condition of obesity.' The plaintiff contends that Anthem excludes all coverage of prescription medication for the treatment of obesity, even though it covers similar prescriptions for other medical conditions, such as diabetes." [Full Article](#)

**Miller & Chevalier Chartered**



## Health Plan Hygiene Part 3 – Best Practices for TPA Evaluation, Selection, and Contracting

"The employer should select a potential TPA well before the implementation date so that there is time for legal counsel and the broker/consultant to negotiate the services agreement and fees and, if necessary, select an alternate TPA if the negotiations fall apart. Key contractual provisions include: [1] Indemnification provisions; [2] Accepting fiduciary responsibility; [3] Audit rights; [4] Termination provisions; [5] Claims litigation." [Full Article](#)

**Jackson Lewis P.C**