

HIPAA Compliance and Wellness Programs

DOES YOUR WELLNESS PROGRAM COMPLY WITH HIPAA?

On December 13, 2006, the Department of Labor, the Treasury, and Health and Human Services published joint final regulations on the nondiscrimination provisions of the Health Insurance Portability and Accountability Act (HIPAA). As you may know HIPAA prohibits group health plans and insurers from discriminating in eligibility, premiums or contributions because of an employee (or dependents) health status. The final regulations include guidance on the implementation of **WELLNESS PROGRAMS**.

These regulations apply to group health plans and group health insurance issuers on the first day of the plan year beginning on or after **July 1, 2007**. For calendar year plans, the new regulations began to apply on **January 1, 2008**.

Use the checklist below to assess your current or proposed wellness strategies. Will you be compliant with HIPAA's non-discrimination rules?

WELLNESS PROGRAM CHECKLIST

A. Insert the first day of the current plan year.

- ❖ Is the date after July 1, 2007?

B. Does the plan have a wellness program?

- ❖ A wide range of wellness programs exist to promote health and prevent disease. However, these programs are not always labeled "wellness programs."

C. Is the wellness program part of a group plan?

- ❖ The wellness program is only subject to Part 7 of ERISA if it is part of a group health plan.

D. Does the program discriminate based on a health factor?

- ❖ A plan discriminates based on a health factor if it requires an individual to meet a standard related to a health factor in order to obtain a reward.

E. If the program discriminates based on a health factor, is the program saved by the benign discrimination provisions?

- ❖ The Department's regulations permit discrimination *in favor* of an individual based on a health factor.

F. COMPLIANCE CRITERIA

1. Is the amount of the reward offered under the plan limited to 20% of the applicable cost of coverage?

2. Is the plan reasonably designed to promote health or prevent disease?
3. Are individuals who are eligible to participate given a chance to qualify at least once per year?
4. Is the reward available to all similarly situated individuals? Does the program offer a reasonable alternative standard?
5. Does the plan disclose the availability of a reasonable alternative in all plan materials describing the program?

If you answered “yes” to all of the 5 questions on wellness program criteria, there are no violations of the HIPAA wellness program rules.

If you answered “no” to any of the 5 questions on wellness program criteria, the plan has a wellness program compliance issue.

*For further information on HIPAA Compliance and Wellness Programs, go to:
<http://www.dol.gov/ebsa/regs/fedreg/final/2006009557.pdf>.*

Additional compliance information regarding the other provisions in Part 7 of ERISA, including the HIPAA portability provisions and the rest of the HIPAA non-discrimination provisions, is available on the Department of Labor’s website at www.dol.gov.

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