Employee Benefits Report

The Amerisc Corp.

777 Zeckendorf Blvd. • Garden City, NY 11530 • (516) 745-7500

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Does Your Wellness Program Meet HIPAA Regulations?

There's more to administering wellness programs than meets the eye. The checklist below will help you avoid running afoul of HIPAA's nondiscrimination provisions.

Certain types of health promotion or disease prevention programs offered by group health plans must comply with the Department of Labor's December 13, 2006 final regulations on the nondiscrimination provisions of the Health Insurance Portability and Accountability Act (HIPAA).

The 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. Accordingly, for calendar year plans, the new regulations began to apply on January 1, 2008.

HIPAA's nondiscrimination provisions generally prohibit a group health plan or group health insurance issuer from denying an individual eligibility for benefits based on a health factor and from charging an individual a higher premium than a similarly situated individual based on a health factor. Health factors include: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence) and disability.

An exception to HIPAA's nondiscrimination provisions exists for wellness plans, however. Plans may vary benefits, premiums or contributions if an individual meets the standards of a wellness program that complies with paragraph (f) of the regulations.

Wellness Program Checklist

Do your wellness programs have to comply with the Department of Labor's final wellness program regulations? Use the following questions to find out, and if so, whether your programs do comply.

❑ Yes ❑ No — Is the first day of the current plan after July 1, 2007?

The wellness program final rules apply for plan years beginning on or after July 1, 2007.

❑ Yes ❑ No—Does the plan have a wellness program?

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This Just In

A Supreme Court ruling could increase the liability of employers who sponsor and administer retirement plans. The decision in *LaRue v. DeWolff, Boberg and Associates* suggests that individual participants may bring suit for losses they suffer when employers and other plan fiduciaries fail to meet their duties to employee plans and their participants.

Considered a significant development in ERISA litigation, the *LaRue* case involved a participant who sued due to losses in his 401(k) plan. The participant requested a change to his investment mix and when the plan administrator failed to follow his instructions, he alleged losses in his account of more than $150,000.

Is a Commuter Benefits Program Right for Your Company?

Commuting to work has always been a problem for a large percentage of employees. Now with fuel prices at record levels, it's an expensive problem as well.

And it's not just employees who are suffering. The increasing pressures of commuting have a significant effect on the attitudes and loyalties of employees toward their employers, according to a survey conducted by *Business Week*.

The survey suggests that commuting pressures are prompting many respondents to consider a change of employment. In fact, 26 percent of all respondents said they are considering another job in a different location due to their commute. Among respondents who say their commute is "getting worse," 63 percent say they are considering finding work closer to home.

There are other commuter-related problems. Getting to work late usually results in increased stress for employees and the possibility of a shortened and less productive workday. The study revealed that nearly one-quarter of respondents arrive to work late (15 minutes or more) three or more days a month due to their commute. Among respondents who say their commute is getting worse, 35 percent arrive late.

Looking to employers

In trying to find solutions to cope with commuting pressures, most employees look to their employers for relief.

Nearly two-thirds of respondents feel their employers should take the lead in helping to ease the difficulties of their commutes. This percentage is even higher for those most affected by these pressures.

Still, many employers have been slow in providing solutions, even low-cost or no-cost solutions. Even though a commuter benefits program would allow employees to pay for their commuting expenses tax-free, up to monthly limits set by the IRS, companies have been slow to adopt such programs.

Starting a commuter benefits program

To start a successful program, ask a few key questions:

- ✔ What commute options are our employees likely to use?
- ✔ How many employees will be able to participate in the program, and which employees?
- ✔ What is the budget for the commuter benefit program?
- ✔ How much administrative time is our company willing to commit to the program?
- ✔ What does our company hope to accomplish with a commuter benefit program?

Commuter benefits programs can cost little to implement and will often pay for themselves in the long run. For example, the cost of providing subsidized commuter benefits or tax-free transit benefits can be deducted as a normal business expense. Even better, unlike ordinary wage payments, employers do not have to pay their share of federal payroll taxes on subsidized commuter benefits. This payroll tax savings alone is usually more than enough to cover any cost of administering the program.

Here are some examples of how your company can combine various commute program elements to meet specific needs:

If your company wants to decrease the cost of passes to employees who commute by bus or rail, consider:

- ✔ allowing employees to use pre-tax income to purchase their pass, and matching the employee contribution with a small subsidy.

If your company wants to increase the number of employees who commute by bus or rail – to manage tight parking, for example – consider:

- ✔ providing a subsidy for all or a portion of your employees' passes,
- ✔ allowing employees to use pre-tax income to purchase the remaining portion of their bus pass, and
- ✔ posting a commute options board with schedule information.

If your company wants to offer an equitable but varied program of commute options to employees, consider:

- ✔ providing a subsidized voucher for employees to purchase bus, rail, ferry and vanpool passes,
- ✔ providing safe bike storage area and lockers for those who walk or bike to work,
- ✔ posting a commute options board with information on bus, rail, ridesharing, walking and bicycling, and
- ✔ providing telework or alternative work hours.

A commuting benefits program can help you increase employee loyalty, reduce attrition and employee stress, increase productivity, and provide an advantage when competing for talent. ■

Commute Worries Growing

The problems of commuting have clearly moved front and center in the lives of today's workforce. In a recent survey:

- **80 percent of respondents expressed some degree of concern over the cost of commuting to work.**
- **92 percent expressed some degree of concern over the high cost of fuel.**
- **52 percent of solo drivers said the frequency and duration of traffic jams were getting worse.**
- **92 percent of respondents had some degree of concern about the effects of global warming on the environment.**

Source: Society for Human Resource Management

More Employees Are Borrowing Against 401(k) Plans

An increasing number of employees are risking their retirement by taking out loans on their investments, according to a Boston College researcher.

The percentage of participants in 401(k) programs who have taken a loan from their investments doubled from nine percent in 2005 to 18 percent in 2007, according to Alicia Munnell, director of the Boston College Center for Retirement Research. "I think you can also expect to see more withdrawals," Munnell said.

And here's another disturbing trend: a new debit card that lets consumers use ATMs to withdraw money from their 401(k) plans. The ReservePlus card is marketed by Reserve Solutions Inc., a New York financial firm that says it has 10,000 cardholders already.

The debit cards allow cardholders to take out loans from their employer-sponsored 401(k) retirement funds. Normally, restrictions on the funds discourage account holders from making withdrawals before they are 59½ years old.

Early withdrawals from 401(k) plans come with taxes and fees, which could deprive account holders of their nest eggs if they fail to replace the money promptly.

"For every $10 you take out of the account, you only have $6 or $7 to spend, probably closer to $6, which means you're giving up a third of your money," said Stuart Ritter, certified financial planner for T. Rowe Price, a Baltimore asset-management company. "You're also giving up money to spend in retirement, so you are by definition lowering your lifestyle in retirement."

You can help your employees by stressing the many significant disadvantages of taking early withdrawals from retirement accounts. Remind them that financial planners warn consumers to be cautious about taking money out of retirement plans, especially as the nation's economic slowdown makes withdrawals more tempting.

Most importantly, says Munnell. "Employers must make 401(k) plans more effective through automation."

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Ignore the labels – wellness programs can be called many things, such as disease management programs, smoking cessation programs, and case management programs.

❑ Yes ❑ No — Is the wellness program part of a group health plan?

The wellness program is only subject to Part 7 of ERISA if it is part of a group health plan. If your company operates the wellness program as an employment policy separate from the group health plan, the program may be covered by other laws, but it is not subject to the group health plan rules discussed here.

❑ Yes ❑ No — 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 to obtain a reward. A reward can be a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism (such as deductibles, copayments, or coinsurance), the absence of a surcharge, or a benefit that would otherwise not be provided under the plan.

If you answered "No" to any of the above questions, stop. Your plan does not maintain a program subject to the group health plan wellness program rules. Otherwise, continue–

❑ Yes ❑ No — If the program discriminates based on a health factor, is the program saved by the benign discrimination provisions?

The Department of Labor's regulations permit discrimination in favor of an individual based on a health factor—in other words, if a plan offers a reward to individuals based on an adverse health factor. An example would be if the plan waives the plan's annual deductible for participants who have diabetes if they enroll in a disease management program.

If you answered "Yes" to the previous question, your plan does not violate the wellness program rules. If you answered "No," the program must meet additional criteria. You'll find these, along with additional information regarding HIPAA nondiscrimination provisions, at: http://www.dol.gov/ebsa/pdf/fab2008-2.pdf

For more information on wellness programs or how HIPAA affects administration of your benefit plans, please contact us.

Get Going with 529 College Savings Plans

According to the College Board, the cost of a year at a private four-year college during 2007-8 averaged $23,712 (up 6.3 percent from the previous year), while costs for public four-year colleges jumped 6.6 percent, to an average of $6,185 per year. A 529 plan can help your employees save for their children's college costs—at little cost to you.

For employees, 529 plans let investments grow tax-free, and withdrawals are exempt from federal income taxes when used to meet educational expenses.

Employers, meanwhile, can offer employee access to a 529 plan at little or no cost, and because it is not covered under the Employee Retirement Income Security Act, no costly tax forms are required. From the employee perspective, the ease of payroll deduction and the potential for reduced fees are key advantages.

Booming biz

Not surprisingly, investment in 529s is booming. Currently, every state sponsors at least one 529 plan, and many sponsor more than one. Financial Research Corporation has estimated total assets in 529 savings plans at $111.9 billion in 2007, representing a 23.4 percent increase from the previous year.

If you're considering implementing a workplace 529, you must take several issues into account and determine:

- Who will manage the plan? A member of your staff, the vendor or a third-party administrator?
- Does the in-state 529 plan provide a performance and/or tax break advantage over other plans?
- Do benefits makes sense when compared with the expected employee response and participation?

When choosing a plan, consider investment performance and the flexibility of the features offered in the plan. You'll have some extra work to do if your company has employees in more than one state, since employees may be able to take advantage of additional tax breaks in a plan offered by their state of residence.

Employees, meanwhile, should consider the best way to divide or add to their existing benefit plan contributions. Finally, every employee should determine whether they will be able to transfer funds to another 529 plan without penalty should they change jobs.

If you're on the fence, consider this: A recent Harris Interactive survey showed that while more than 40 percent of employees say they would welcome the benefit, nine out of 10 say 529 plans are not yet available at their workplace.

Q&A: 529 College Savings Plan

Here are a few questions you'll want to ask to start your company's 529 plan.

1. **Is the plan available directly from the state or plan sponsor?**
2. **What fees does the plan charge? How much of a participant's investment goes toward compensating the broker? Under what circumstances does the plan waive or reduce certain fees?**
3. **How does the plan restrict withdrawals? What types of college expenses does the plan cover? (Expenses might include tuition, fees, books, dorm/dining expenses.) Which colleges and universities participate in the plan?**
4. **What types of investment options does the plan offer? How long are contributions held before being invested?**
5. **Does the plan offer special benefits for state residents? Would I be better off investing in my state's plan or another plan?**
6. **What limitations apply to the plan? When can I change investment options, switch beneficiaries, or transfer ownership of the account to another account holder?**
7. **Who is the program manager? When does the program manager's current management contract expire?**
8. **How has the plan performed in the past?**