

Employee Benefits Security Administration Issues Guidance On Health Plan Wellness & Disease Management Practices Subject To HIPAA Nondiscrimination Rules

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On February 14, 2008, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) released guidance to the agency's national and regional offices on the types of health promotion and disease management programs required to comply with final regulations relating to the application of the nondiscrimination requirements of the Health Insurance Portability and Accountability Act (HIPAA) to wellness and disease management programs. The guidance is particularly timely in light of the growing interest of employers and health plans in the use of disease management and wellness programs to manage health care costs and promote health care quality.

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 provides that plans may vary benefits (including cost-sharing mechanisms) and premiums or contributions based on whether an individual has met the standards of a wellness program that complies with paragraph (f) of the regulations.

On December 13, 2006, the Departments of Labor, the Treasury, and Health and Human Services published joint final regulations on these nondiscrimination provisions including the wellness and disease management arrangements that HIPAA-covered plans may use without violating the nondiscrimination rules. See 29 CFR 2590.702. These final HIPAA nondiscrimination rules 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.

In Field Assistance Bulletin (FAB) 2008-02, the EBSA provides a checklist designed to help its staff determine which health promotion or disease prevention programs offered by a group health plan must comply with the regulations and how to determine whether such programs do comply with the regulations. The checklist includes examples and tips on the applicability of the wellness program rules and, if the rules apply, the five compliance criteria. To review a copy of this checklist, go to <http://www.dol.gov/ebsa/regs/fab2008-2.html>.

For other publications and information about legal requirements and concerns impacting the design and administration of wellness, disease management and other health, welfare and human resources programs and practices, log in to the cynthiastamer.com website or contact Ms. Stamer. If you have any questions regarding the HIPAA requirements, wellness or other health plan design or administration matters, or if we may be of assistance with any other employee benefit or employment related matters, please do not hesitate to contact Cynthia Marcotte Stamer at 972.419.7188.

About Cynthia Marcotte Stamer

Board Certified In Labor and Employment Law by the Texas Board of Legal Specialization, attorney Cynthia Marcotte Stamer has more than 20 years experience helping employers and business leaders, health plan fiduciaries and administrators, insurers and others design, implement, administer and defend health and other employee benefit and compensation, insurance and other human resources practices, policies and strategies. Ms. Stamer is recognized for her work helping clients design and administer legally compliant employee benefit and human resources programs, practices and products for employer, employee benefit, and insurance and financial services industry clients.

Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer is a highly regarded legal advisor and consultant, author and speaker, who regularly conducts management and other training on a wide range of employee benefit, human resources and internal controls, and other related risk management matters. Ms Stamer is the author of 100s of publications on a host of human resources and related issues. Her writings have appeared in a variety of other publications, including works published by the American Bar Association, Aspen Publishers, BNA, the American Health Lawyers Association, SHRM, World At Work, Government Institutes, Inc. and many others. For a listing of some of these publications and programs, see cynthiastamer.com. Her insights on human resources risk management matters also have been quoted in The Wall Street Journal, various publications of The Bureau of National Affairs and Aspen Publishing, the Dallas Morning News, Spencer Publications, Health Leaders, Business Insurance, the Dallas and Houston Business Journals and a host of other publications. She also serves in leadership positions in numerous human resources, corporate compliance, and other professional and civic organizations. For instance, she presently is Chair of the American Bar Association (ABA) Health Law Section Managed Care & Insurance Interest Group, and Vice Chair of both the ABA Real Property, Probate & Trust Section Employee Benefits & Compensation Group and the ABA TIPS Worker's Compensation Committee, Continuing Education Liaison for the ABA Joint Committee on Employee Benefits, a member of the IRS TEGE Council, a member of the Editorial Advisory Board and contributing author of various publications, and as faculty member and planning committee member for numerous human resources related programs. She also has previously served as Region IV Chair and a National Consultants Forum Board Member for the Society of Human Resources Management, Chair of the Dallas Bar Association Employee Benefits and Executive Compensation Section, and as a State Executive Board Member and Dallas Chapter Chair of the Texas Association of Business. For more details about Ms. Stamer's experience and other credentials, contact Ms. Stamer, information about workshops and other training, selected publications and other human resources related information, see CynthiaStamer.com or contact Ms. Stamer via telephone at 972.419.7188 or via e-mail at cstamer@solutionslawyer.net.

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