



SPECIAL *Alert*

In This Issue

In this second issue of the McGrawWentworth Special Alert for 2008, we discuss the Field Assistance Bulletin (FAB) recently released by the Department of Labor (DOL). The FAB addresses wellness plans and incentives employers are offering to participate and in some cases, even achieve specific health metrics. HIPAA non-discrimination rules address permissible incentives for wellness; however, the DOL continues to receive a significant number of questions from employers.

The FAB is a checklist for wellness incentives. Your organization can walk through the checklist to determine if your incentives meet the DOL requirements.

We welcome your comments and suggestions regarding this issue of our Special Alert. For more information on this article, please contact your Account Manager or visit the McGrawWentworth web site at www.mcgrawwentworth.com.

“More Wellness Guidance”

A growing number of employers are interested in offering programs that improve their employees' health, but despite the win-win proposition of wellness initiatives, employees are not always motivated to participate. Recognizing the positive impact of improved employee health, many employers want to offer strong incentives to employees for participating in wellness programs. The Department of Labor (DOL) released the Field Assistance Bulletin (FAB) 2008-02 in February. The bulletin provides very practical guidelines for employers who want to offer incentives for plan participation and achievement of specific health goals.

HIPAA's non-discrimination rules prohibit group health plans from discriminating against individuals with regard to health care cost or coverage based on an individual's health condition. The non-discrimination rules offer an exception to these rules for specific wellness programs. A health plan can vary benefits and employee contributions based on whether an individual meets the standards set forth by a “qualifying” wellness program.

In December 2006, the Department of Labor released revised non-discrimination regulations which are detailed in our Benefit Advisor at http://www.mcwent.com/Benefit_Advisor/2007/BA_Issue_1.pdf. These revised regulations provided greater detail on what type of arrangements would be considered “qualifying” wellness programs.



Despite these clarifications, the Department of Labor continued to receive numerous questions on how to apply the standards outlined in the non-discrimination rules to wellness plans. The Field Assistance Bulletin provides a handy checklist to determine if your organization's wellness incentives comply with the non-discrimination rule requirements. You can download a copy of the actual bulletin at <http://www.dol.gov/ebsa/pdf/fab2008-2.pdf> and walk through the checklist specific to your organization's plans.

Some of the interesting points clarified by the checklist include:

- **Ignore labels:** A wellness program can be called a number of things: disease management, smoking cessation, case management and so on. It does not matter what the program is

called; a wellness program is any program designed to promote health and prevent disease.

- **Employment policy:** HIPAA non-discrimination rules apply only to group health plans. The wellness program must qualify as a group health plan. The FAB contains the example of an employer who institutes an employment policy requiring any employees who smoke to be fired. In this case, this is an employment policy, not a group health plan. It must comply with other state and federal laws, but it is not subject to HIPAA non-discrimination rules.



- **Benign discrimination provisions:** Any provision that discriminates in favor of an individual based on a health factor is permitted. For example, a plan that offers diabetics a waiver of the annual deductible to enroll and participate in a disease management program is permitted. But you must be

careful. If your plan offers the reward for achieving a health factor, this is called intervening discrimination and is not permitted. For example, if the plan requires a diabetic to participate in a disease management program and to achieve a Body Mass Index of less than 27, this is considered intervening discrimination.

- **20% reward standard:** One of the requirements of HIPAA non-discrimination rules is that any reward provided for achieving a health factor is limited to 20% of the employer's cost for single coverage. It can be expanded to 20% of other coverage categories, such as two-person and family, if wellness plans are extended to dependents. The FAB reiterates the 20% incentive is cumulative for any rewards offered to achieve specific health factors.

A group health plan that offers incentives to individuals to achieve specific health factors must meet the requirements set forth in the HIPAA non-discrimination rules. While the

rules are fairly straightforward, employers have struggled with determining if their incentive arrangements meet the HIPAA requirements.

The latest guidance from the Department of Labor provides a very understandable checklist to help employers determine if their wellness incentives meet HIPAA non-discrimination requirements. Please contact your McGraw Wentworth Account Director with any questions you have regarding this latest DOL Field Assistance Bulletin. **MW**

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