



SCHIFF-KREIDLER-SHELL
INSURANCE AND RISK SERVICES

Legislative Brief

Final HIPAA Rules on Nondiscrimination and Wellness Programs



This Schiff, Kreidler-Shell Legislative Brief provides an overview of the nondiscrimination and wellness plan rules provided for under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The final regulations regarding these programs were released on December 13, 2006. The compliance date for the regulations was delayed until the first day of the plan year beginning on or after July 1, 2007. Therefore, calendar year plans were required to comply by **January 1, 2008**.

In general, HIPAA's nondiscrimination rules provide that health plans may not discriminate with respect to health coverage for individuals based on health status, medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability and disability. Prohibited discrimination includes excluding individuals from coverage, denying benefits or charging more for coverage based on any of these factors. In addition, plans may limit or restrict benefits only if the limitation is applied equally to all similarly-situated individuals and not to specific individuals based on these health factors. Plans may also provide different benefits to different groups of employees, if there is a legitimate distinction between the groups.

The final rules address several questions regarding HIPAA's nondiscrimination requirements and provide the following guidance:

- Health Reimbursement Arrangements ("HRAs") that allow carryovers do not violate the nondiscrimination rules;
- Plans must treat special enrollees the same as regular enrollees, but may treat late enrollees differently;
- Source-of-injury exclusions may not be used to deny benefits that would otherwise be provided under the plan if the injury results from a physical or mental medical condition (including suicide attempts caused by depression) or an act of domestic violence;
- Preexisting condition exclusions that meet HIPAA's requirements are permissible;
- HIPAA's prohibition of nonconfinement clauses and state law may result in overlapping coverage for individuals; and
- Plans may provide more favorable treatment to individuals with adverse health factors.

The final rules also clarify whether wellness programs will violate the nondiscrimination rules. The regulations state that so-called "participation only" wellness programs are consistent with the nondiscrimination requirements. These programs reward participants for taking part in the program and do not base rewards on the outcome. However, wellness programs that base rewards on a participant's ability to meet a health-related goal must satisfy the following conditions:

- The value of the reward may not exceed 20% of the value of coverage under the plan;
- The program must be reasonably designed to promote health or prevent disease;
- Participants must be able to qualify for the reward at least once a year;
- The reward must be available to all similarly-situated individuals and there must be an alternative standard for those with adverse health factors that affect their ability to meet the standard requirements; and
- The plan must disclose the alternative standard in plan materials.

Please contact your Schiff, Kreidler-Shell representative with any questions.

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