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# The Rathbone Report

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## Final HIPAA Regulations Governing Wellness Programs

Employers and insurers have many opportunities to offer financial incentives to promote health and prevent disease through wellness programs. This article summarizes the final HIPAA Wellness Program Regulations passed in December 2006 and is applicable to plan years beginning on or after July 1, 2007.

Employers may offer wellness programs that provide a reward to all individuals that participate in the program, regardless of outcome. This type of wellness program is NOT required to comply with any additional requirements contained within the HIPAA Wellness Program Regulations. Examples of this type of wellness program include reimbursing employees for the cost of a health club membership, without regard to health factors; reimbursing employees for the cost of smoking cessation programs, whether or not the employee quits smoking; and providing rewards for participation in a diagnostic testing program.

Where a wellness program conditions receipt of the reward on an outcome, the program MUST comply with the additional requirements contained within the HIPAA Wellness Program Regulations. These requirements are as follows:

- **Limit on Reward.** When the wellness program allows only the employee to participate, the reward must not exceed 20% of the cost of employee-only coverage (e.g., total amount of employer and employee contributions for the cost of employee-only coverage). When dependents may participate, the reward must not exceed 20% of the cost of the coverage category in which the employee and dependents are enrolled (e.g., total amount of employer and employee contribution for the cost of family coverage).
- **Reasonably Designed to Promote Good Health or Prevent Disease.** Wellness programs must be designed to promote good health or prevent disease. If a wellness program has a reasonable chance of improving the health of participants and is not overly burdensome, a subterfuge for discriminating based upon a health factor, or highly suspect in the method chosen to promote health and prevent disease, the wellness program will satisfy this requirement.
- **Annual Opportunity to Qualify for Reward.** Wellness programs must give individuals an opportunity to qualify for the reward at least once per year.
- **Reasonable Alternative Standard.** The wellness program must provide a reasonable alternative standard for obtaining the reward for certain individuals. This alternative standard must be available for individuals for whom it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard, or for whom it is medically inadvisable to attempt to satisfy

the otherwise applicable standard. A program does not need to establish the specific reasonable alternative standard before the program commences.

It is sufficient to determine a reasonable alternative standard once a participant informs the plan that it is unreasonably difficult for the participant to satisfy the general standard due to a medical condition. The final regulations include an example that demonstrates what a reasonable alternative standard could include following the recommendations of an individual's physician regarding the health factor at issue.

- **Disclosure Requirements.** All wellness program materials must include a description of the general standard and disclose the availability of a reasonable alternative standard. While the final regulations are substantially the same as the requirements contained within the prior interim and proposed regulations, employers should review their wellness programs prior to their next plan renewal. A recent study published by Hewitt Associates found that many wellness programs currently in place do not comply with the HIPAA Wellness Program Regulations. Until now, the interim and proposed regulations indicated that a period of nonenforcement in cases of good faith compliance would end upon the applicability date of the final regulations.

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## PROPERTY & CASUALTY INSURANCE CORNER

Steven R. Myers, CFI has launched Catamount Worksite Safety Services, a safety consulting firm located in the Rathbone & Company offices in South Burlington. Myers has over 18 years experience working with manufacturing firms, contractors and a variety of other businesses, assisting them with Workers Compensation Management, Safety and Training, plus Apprenticeship programs. Myers expertise in safety and health management has saved companies millions of dollars in Workers Comp and other commercial line premiums. Myers has brought to the forefront, effective Return-to-Work programs, hands on training, cost effective ergonomic solutions and a no-nonsense approach to safety that everyone can understand.

Myers has advised many businesses with his safety expertise over the years, including several safety consulting companies throughout Vermont and New England. He has been recognized throughout the safety industry as a reliable resource for accurate information and services.

You can contact Steve Myers at Catamount WorkSite Safety Services, 802-658-3633, ext. 204 or [steve@catamountsafety.com](mailto:steve@catamountsafety.com)

## Vermont Catamount Health Plan Reminder

The law now contains specific definitions for part-time and seasonal employees, as well as addresses the application of the assessment for these type of employees. Part-time employees are defined as working less than 30 hours per week, or fewer than a total of 390 hours in a calendar quarter. Seasonal employees are those that work 30 or more hours per week, but 20 weeks or fewer in a calendar year and work in a job scheduled to last 20 weeks or less.

If an employer group offers insurance to full-time employees, but not all employees, they may need to pay an assessment for those employees that are classified as part-time and/or seasonal. Employers will need to first determine if those employees for whom they do not offer insurance meet the definition of part-time or seasonal. For any employees that meet the definition, the employer will need to obtain proof of coverage if they are insured elsewhere. If the proof of coverage demonstrates the employee is covered by a plan other than Medicaid, the Vermont Health Access Plan or the Catamount Health Plan, (e.g. coverage through a spouse's employer or Medicare) then these employees will not be counted in the accumulated hours used to calculate the assessment. For those part-time and/or seasonal employees who do have coverage through Medicaid, the Vermont Health Access Plan, the Catamount Health Plan or are uninsured, payment of the assessment will apply.

You can obtain further information pertaining to the Catamount Health Plan and the assessment by visiting the following website:

<http://labor.vermont.gov/Default.aspx?tabid=1164>

RATHBONE & Company is a division of the Kinney Pike Insurance Group. Kinney Pike is one of the largest, most respected independent property and casualty insurance agencies in Northern New England. Kinney Pike has established itself as a leader in the commercial property and casualty insurance field as well as personal insurance lines.

The Kinney Pike property and casualty professionals work with a diverse array of industries and have helped many companies meet their insurance needs. Additionally, their ongoing service and attention to detail are unmatched.

Please contact us if you would like to review your property and casualty insurance lines with a Kinney Pike Agent. TRR