

BeniComp Comments Regarding January 16, 2008 Wall Street Journal article

The article titled “Wellness Programs May Face Legal Tests” that recently appeared in the WSJ has sparked many questions and requests for clarification. BeniComp did not view this as a negative article and we have been rather surprised by the number of readers who expressed concern.

This article accurately summarizes recent legislation pertaining to wellness programs and recent interpretive guidance pertaining to a safe harbor created for plans claiming exemption from non-discrimination based upon their supplemental status.

Many of our customers and business partners may recall that BeniComp did originally begin marketing the BeniComp Advantage program as a unique policy that appeared to be “exempt from HIPAA non-discrimination laws” in 2004 and 2005. In January 2006 however, following discussions with federal agencies, we modified the program to include features such as alternative ways to earn credits when achieving a goal was medically inadvisable or unreasonably difficult due to a medical condition. We also began to include a calculated alternative minimum credit in our plan documents. This minimum reward was available to ensure that no employee was penalized by more than 20% of premium based on the results of their health assessment. At the time, although there was nothing to suggest that our program would not be viewed as coverage that was “similar to TRICARE or Medicare supplements” the point was moot because we complied with the 2001 interim bona-fide wellness rules. We believed our customers were “safe” for both reasons.

In December of 2006 the proposed regulations addressing wellness plans were finalized, with some significant changes. The final rules went into effect on plan renewal dates on or after July 1, 2007. In preparation of this date we compared our program to the final rules and instituted changes for all clients that were designed to strengthen our “compliant” position. Enhancements included required spouse involvement if 20% of family premium was going to be used in calculations, disclosure of the availability of reasonable alternatives in all member plan communications, an enhanced appeal form and process and a more proactive calculation and display of minimum rewards available under the plan. We continue to believe the plan is fully compliant but under-girded by the fact that it was probably exempt from the rules anyway.

In December of 2007 we had further dialogue with federal agencies and received guidance on our updated plan communication materials. The document changes were easily incorporated and did not materially change the way the product was administered. When the December 7, 2007 Field Assistance Bulletin (FAB) was issued it did raise questions for us in that it threatened our position of “exemption from the rules”, but because we had converted all clients to a model that was designed to comply with the regulations rather than ignore them, the FAB did nothing to slow or stop our progress. The only change is that our “safety net” of being “probably exempt” does not appear to qualify for the safe harbor that was created. We are aware that several national employee benefit consulting firms have been critical of the FAB, and we anticipate further clarification will be given. Again, this is irrelevant given our efforts to structure the plan to comply with the final wellness rules.

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