

Benefits Alert

April Showers Bring... HIPAA Deadlines!

There are two Health Insurance Portability and Accountability Act (HIPAA) deadlines in April — one for employers with large health plans (i.e., plans with annual receipts exceeding \$5 million) and one for employers with small health plans (i.e., plans with annual receipts of \$5 million or less).

PRIVACY NOTICE DEADLINE

Large health plans had to distribute the initial HIPAA Privacy Notice by April 14, 2003, and a reminder every three years thereafter. Therefore, by April 14, 2006, large health plans must provide notification reminding plan participants of the availability of, and how to obtain, the notice.

Before sending out the reminder, review the notice itself

to check for any changes and/or updates and edit the notice to reflect the new date. While there haven't been any government-mandated changes to the notice, check to see that company-specific information (e.g., a contact name or telephone number) hasn't changed.

SECURITY RULE DEADLINE

Most covered entities were required to comply with HIPAA's Security Rule in April 2005, but employers with small health plans were given an extra year. April 21, 2006, marks the deadline by which small plans must become compliant.

The Security Rule requires covered entities to assess the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronically protected health in-

In This Issue

- April Showers Bring... HIPAA Deadlines!
- Roth 401(k) Regs Open The Tax-Free Savings Door To All
- Are Wellness Programs Worth Their Weight In Company Dollars?
- Asleep On The Job, Literally!
- Ask The Experts

formation (ePHI), and implement measures to reduce identified risks. **Note:** Informal statements from officials at the Centers for Medicare & Medicaid Services indicate that if no ePHI is discovered through the risk assessment, there would not be much left for the employer to do.

The implementation of protective e-measures may appear to be a job for your company's IT department. However, there are several steps non-techies can take to help ensure compliance.



XYZ Company

**YOUR COMPANY NAME,
CONTACT INFORMATION, AND LOGO HERE**

Roth 401(k) Regs Open The Tax-Free Savings Door To All

After-tax Roth IRAs, with no taxes levied on the gain ever, are almost as good as it gets. But due to income limits, anyone with an income in the low six figures is frozen out. Final regulations, generally effective for plan years beginning January 1, 2006, allow 401(k) plans to offer an after-tax Roth feature to all employees, regardless of income. *The hitch:* Offering a Roth feature, attractive as it is for employees, is no slam-dunk for

plans. In addition to a plan amendment, the regs make crystal clear that all the 401(k) plan rules, plus some special rules, apply.

Under the final regs, only plans that offer employees the option of making pre-tax contributions can offer them the choice of designating some or all of those contributions as Roth contributions. Roth contributions, therefore, cut into employees' pre-tax contributions.

For plans that automatically

enroll new hires, the regs allow the default option for automatic enrollment to be the Roth feature. But employees will need a meaningful opportunity to elect to receive salary, instead. *What's meaningful:* Employees must be able to opt out of the 401(k) plan at least once a year.

SEPARATION RULES

The final regs carry through with the proposed regs' requirement that, at the plan level, all the 401(k) rules — including non-forfeatability of contributions and discrimination testing — apply to Roth 401(k) contributions and distributions. That notwithstanding, the Roth feature must be a trust separate from the 401(k) trust. Separate accounting applies to contributions and withdrawals, and to gains, losses, and other credits. *Key:* Because of these separation rules, employers may not make matching contributions, and forfeitures may not be credited to employees' Roth 401(k) accounts.

SPECIAL DISTRIBUTION RULES

Since the 401(k) rules apply, the same rules that generally apply to rollovers of employees' pre-tax contributions apply to rollovers of Roth 401(k) contributions. This includes the direct rollover rules and the automatic rollover rules, which require plans to open IRAs in employees' names if they don't provide distribution instructions. *Where it differs:* Roth 401(k)s can be rolled over only into other Roth 401(k)s or Roth IRAs. *Exception:* If the distribution is less than \$200, the plan doesn't need to offer a direct rollover option. ❖

* * * * *

HIPAA Deadlines (cont.)

1. Amend business associate agreements and plan documents to include ePHI provisions. State that the business associate or plan sponsor is required to implement safeguards for ePHI, ensure that any subcontractor or agent does the same, and report any known security incident.

2. Name a single security official who will be responsible for the security of ePHI. Select someone other than the individual named as the privacy official in existing HIPAA privacy documents.

3. Assist IT in controlling access to ePHI. Start by cataloguing the different types of ePHI stored and transmitted by the company and how this information is used and disclosed. Next, create a list of individuals who are authorized to have access to ePHI and the scope of

that access. Then, keep the list current; promptly inform IT when an individual's access rights are terminated.

4. Create and implement policies that address: access to ePHI; security awareness training; how to identify, report, and investigate security incidents; and data destruction.

5. Collaborate with IT to develop a security awareness training program. Also, identify whom to train and when employees should be afforded supplemental and/or refresher training.

6. Plan for an emergency. The Security Rule requires covered plans to: create and maintain data back-ups; be capable of restoring lost data; and establish policies that will safeguard, while ensuring access to, ePHI when operating in crisis mode. ❖

Are Wellness Programs Worth Their Weight In Company Dollars?

Many companies are having a hard time answering this question. According to the International Foundation of Employee Benefit Plans, of those employers it surveyed that have a wellness program, 87% indicated that they did not know the return on investment (ROI) amount for dollars spent by their organization on wellness initiatives.

Two reasons contributing to the difficulty employers are having with wellness metrics, said the survey, are: 1) the lack of a standardized method of measuring savings from these programs, and 2) it may take a few years to realize a positive financial impact from the programs.

Of those employers able to calculate an ROI, 6% reported a return of between \$2.01 and

\$3.50 for every \$1 invested in their programs.

CALCULATING COSTS AND RETURNS

Don't let the findings of this survey deter you from measuring your program's ROI. While this task might seem daunting, it's not impossible. Here are some general guidelines for analyzing the ROI.

- Determine what questions you want the analysis to answer.
- Identify the data necessary to answer those questions, and then develop a data collection process that will allow you to gather all of the necessary information.
- Determine how to analyze the data.

When it comes to the collection and assessment of data,

* * * * *

Asleep On The Job, Literally!

Getting a good night's sleep (or day's sleep for night workers) is the best way for employees to wake up rested and ready to perform their jobs safely and satisfactorily. Unfortunately, getting enough sleep (seven to nine hours, according to the National Sleep Foundation) is just not a reality for many. The resulting on-the-job drowsiness and energy slumps can create a nightmare of poor performance

and accidents. There are limits, though, on how far you can hold sleep offenses against a worker.

BENEFITS BRAWLS

You may consider an employee who has fallen asleep on the job guilty of misconduct. *Beware:* An unemployment benefits examiner or Workers' Compensation board may not agree with you.

Case in point: Over a period of more than six months,

the National Wellness Institute identified at least three areas of economic returns to consider.

1. Medical claims. Compare program participants' pre- and post-program costs against that of non-participants' pre- and post-program costs.

2. Cost of sick leave. Take the amount of time of sick leave used pre- and post-program participation and multiply the difference by the cost of the average wage scale for each time period.

3. Cost of Workers' Compensation. Looking at total claims cost and dividing it by the number of full-time employees that are covered by WC will give you the per capita or per employee WC cost. See whether it changed after the program's institution.

For more in-depth information on measuring the ROI of your company's wellness program, surf to:

http://www.nationalwellness.org/members/index.php?id=1587&id_tier=3410. ❖

an employee repeatedly fell asleep at her desk, resulting in multiple warnings from her supervisor. She explained she had been staying up late studying. After a few more workday naps, she was fired.

The company appealed the awarding of unemployment benefits. It argued that falling asleep at work was disqualifying misconduct. The employee countered that she learned she had the sleep disorder narcolepsy, which caused her to fall asleep unexpectedly. If that were the case, she should have

Asleep (cont.)

gone to a doctor sooner, according to the hearing examiner. Sleeping on the job was affecting her ability to do the job for which she had been hired. That was misconduct. (*Andersen v. Wells Fargo Bank, N.A.*, SD Unemployment Division, App. No. 56701, 2005)

Consider: While unemployment laws vary by state, the ruling may have gone differently had the employee taken steps earlier to take care of her sleep issues. A sympathetic hearing examiner may be loathe to punish an employee for his/her medical condition. Fighting a UI claim may be an uphill battle without proof of adverse job effects (e.g., missed deadlines, low sales).

Follow this employer's lead by giving sleepy staffers plenty of warnings and time to change their sleeping habits (barring safety concerns); that the employee failed to do anything about it hurt her case. However, beware of suggesting that an employee seek medical treatment, as it may spark a perceived disability claim.

Case in point: An employee reported to work early one morning before heading to a remote work assignment. On her drive to the remote site, she fell asleep, got into an accident, and sustained serious injuries. She filed for Workers' Comp benefits, which the state WC board granted and an appeals court affirmed. The company appealed to the state supreme court, arguing that she engaged in willful misconduct by falling asleep at the wheel.

Falling asleep while driving in the pursuit of one's job is

covered under the state's WC law, said the supreme court. Even taking into consideration that the employee wasn't wearing a seatbelt, had been speeding, and took medication the night before, she had not engaged in willful misconduct. She may have been negligent, but negligence does not bar the receipt of WC benefits. (*Mudlin v. Hills Materials, Inc.*, SD Sup. Ct., No. 2005 SD 64, 2005)

Consider: A drowsy driver is likely to receive WC benefits, unless you can show that the accident did not occur in the course of employment. For example, an accident that occurs while driving from one job site to the next would be covered by WC. However, an accident that occurs during an employee's regular commute from home to work (or vice versa) does not occur in the course of employment and would, therefore, not be covered.

OSHA DRIVING GUIDE

The Occupational Safety and Health Administration (OSHA) teamed up with the National

Highway Safety Administration and the Network of Employers for Traffic Safety to release guidelines for employers and employees who use motor vehicles for work purposes. The "Guidelines for Employers to Reduce Motor Vehicle Crashes" features a 10-step program outlining what employers can do to improve traffic safety performance and minimize motor vehicle crashes. It includes a section on drowsy driving.

- Drowsy driving crashes are most likely to occur during the late night, early morning, and mid-afternoon hours. Try to avoid scheduling employees to drive long distances during those times.

- Set a realistic goal for the number of miles employees are expected to drive each day.

- Prohibit employees from taking medications that cause drowsiness before they begin a trip.

- Make sure employees' work schedules don't interfere with their ability to get a full night's sleep before the beginning of a long road trip. ❖

Ask The Experts

Q. *If one of our employees pays her babysitter "off the books," can she still claim reimbursement for those expenses through our company's flexible spending account?*

A. An employee must provide the name, address, and tax ID number (Social Security number for an individual or employer identification number when, for example, it's a day care center) in order to substantiate child care expenses. If the information cannot be provided, but the employee can demonstrate due diligence by providing a photocopy of a driver's license or Social Security card, substantiation may be sufficient for tax purposes.