

Wellness Program Guidelines

HIPAA prohibits a group health plan from discriminating against individuals based on a “health factor”. A health factor includes; health status, medical condition*, claims experience, receipt of medical care, medical history, genetic information, evidence of insurability, and disability. [New proposed regulations, effective for plan years beginning in 2014, amend the current law.]

*Medical evidence suggests that smoking may be related to a health factor. *The Diagnostic and Statistical Manual of Mental Disorders*, which states that nicotine addiction is a medical condition, supports that position.



Participation- Only Programs

If a wellness program’s conditions for obtaining a reward (such as a premium discount) are not based on satisfying a standard related to a health status factor, the wellness program will not be considered discriminatory, as long as participation is available to all similarly situated individuals, and are permissible without conditions (or reward limits) under the rules. For example:

- A program that reimburses all or part of the cost for memberships in a fitness center, or provides pedometers to encourage employee walking and exercise.
- A diagnostic testing program that provides a reward for participation rather than outcomes.
- A program that reimburses employees for the costs of smoking cessation programs without regard to whether the employee quits smoking.
- A program that provides a reward to employees for attending a monthly health education seminar.
- A program that rewards individuals who receive an annual physical.

Health- Contingent Programs

If a reward is based on an individual satisfying a standard related to a “health factor” (such as being a non-smoker, attaining certain results on biometric screenings, or exercising a certain amount) then the plan must meet five requirements in order to comply with the nondiscrimination rules.

- 1) **Annual Qualification:** The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.
- 2) **Size of Reward:** **The total reward for all the plan’s wellness programs that require satisfaction of a standard related to a health factor is limited – generally, it must not exceed 20 percent of the cost of employee-only coverage under the plan. If dependents (such as spouses and/or dependent children) may participate in the wellness program, the reward must not exceed 20 percent of the cost of the coverage in which an employee and any dependents are enrolled.
- 3) **Uniform Availability and Reasonable Alternative Standard:** The reward must be available to all similarly situated individuals. The program must allow a reasonable alternative standard (or waiver of initial standard) for obtaining the reward to any individual for whom it is unreasonably difficult due to a medical condition, or medically inadvisable, to satisfy the initial standard. [Proposed regulations limit costs employers can impose on participants pursuing an alternative standard.]
- 4) **Reasonable Design:** The program must be reasonably designed to promote health and prevent disease in participating individuals. For this purpose, it must: have a reasonable chance of improving health or preventing disease, not be overly burdensome, not be a subterfuge for discriminating based on a health factor, and not be highly suspect in method. [Proposed regulations require the program to offer a different, reasonable means of qualifying for the reward to any individual who does not meet the standard based on the measurement, test or screening.]
- 5) **Notice of Other Means to Qualify:** The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard). [Proposed regulations provide new sample language.]

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The following examples do not reflect changes made by the new proposed regulations.

Example 1: My group health plan gives an annual premium discount of 40 percent of the cost of employee-only coverage to participants who adhere to a wellness program, which consists of annual Health Risk Assessments, health coaching, and attending a monthly health seminar.

This wellness program only requires employees' participation and is not based on an individual satisfying a standard that is related to a health factor, so it does not have to satisfy the five criteria (set forth above) in the HIPAA nondiscrimination regulations.

Example 2: My group health plan gives an annual premium discount of 20 percent of the cost of employee-only coverage to participants who adhere to a wellness program. The wellness program consists of giving an annual cholesterol exam to participants; participants who achieve cholesterol count of 200 or lower receive the annual premium discount. The plan also provides that if it is unreasonably difficult or medically inadvisable to achieve the targeted cholesterol count within a 60-day period, the plan will make available a reasonable alternative standard that takes the relevant medical condition into account.

This wellness program is based on a health factor (achieving a cholesterol count of 200 or lower) and is subject to the HIPAA nondiscrimination regulations, including the five criteria described above of the regulations. In general, among other things, a wellness program subject to the HIPAA nondiscrimination regulations must be available to all similarly situated individuals, provide a reasonable alternative standard, and the reward must be limited to no more than 20 percent of the total cost of coverage. The wellness program described above satisfies the requirement of being available to all similarly situated individuals because the plan provides a reasonable alternative standard and the premium discount is limited to 20 percent of the cost of employee-only coverage.

Example 3: My group health plan offers two different wellness programs, both of which are offered to all full-time employees enrolled in the plan. The first program requires participants to take a cholesterol test and provides a 20 percent premium discount for every individual with cholesterol counts under 200. The second program reimburses participants for the cost of a monthly membership to a fitness center.

In this scenario, the first program is subject to the requirements of the HIPAA nondiscrimination regulations because the premium discount reward is based on an individual satisfying a standard that is related to a health factor (having a cholesterol count under 200). Therefore, the first program must meet the five criteria in the regulations, including the 20 percent limit on the amount of the reward. The second program is not based on an individual satisfying a standard that is related to a health factor, so it does not have to satisfy the five criteria in the regulations.

Furthermore, it is permissible to offer both programs at the same time because the rule limiting the amount of the reward for health-contingent wellness programs to 20 percent of the cost of coverage only applies to programs that require satisfaction of a standard related to a health factor.

****A provision in the health care reform law increases the cap on reward payments to 30% in 2014 and allows regulators the option to increase the cap to as much as 50%. The Department of Labor has proposed regulations to increase the cap to 30% (and up to 50% if related to tobacco-use) for plan years beginning on or after January 1, 2014.**

This is an illustrative summary of the law and does not cover all the specifics of the provision. This is an informal explanation and should not be considered legal or tax advice or interpretive guidance. Regulations are subject to change. Other federal (i.e. ADA, GINA, and EEOC) and state laws may impact the design of a wellness program. Consult with your legal advisor for more information.

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