Wellness Programs and Proposed Regulations

Alliance for Health Reform

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Wellness requirements were issued as part of HIPAA non-discrimination rules in Dec. 2006

HIPAA prohibits group health plans from discriminating against individuals based on their health status, except:

1. Discrimination that is in favor of an individual with adverse health status ("benign discrimination"), or

2. As part of wellness program that meets regulatory requirements

ACA provisions generally follow the 2006 wellness rules, and increased limits on allowed incentives from 20% to 30%, with agency discretion to permit up to 50%
Two Types of Wellness Programs

- **Participatory Programs:**
  - Reward is **not** based on a health factor and must be available to all similarly situated individuals.
  - For example, a reward for joining a fitness center, completing a health risk assessment or taking a diagnostic test (not based on outcome) or participating in a tobacco cessation program (not based on quitting).

- **“Health-Contingent” Programs**
  - Reward is **is** related to a health factor.
  - Subdivided into two groups under final rule.
  - Only permitted if they comply with regulations.
Two Types of “Health-Contingent” Programs

- **Activity-only Programs**
  - To obtain a reward, individual must perform or complete an activity related to a health factor, but is not required to attain or maintain a specific health outcome
  - For example, walking, exercise or diet programs (where no health outcome is required)

- **Outcome-based Programs**
  - To obtain a reward, individual must attain or maintain a specific health outcome
  - For example, stop smoking, or lower BMI, blood pressure, cholesterol or glucose
Health-Contingent Standards

1. **Annual Qualification**
   - Opportunity to qualify for reward at least once a year

2. **Limit on the Amount of the Reward**
   - **New**: 30% per the ACA, up to a total of 50% for tobacco use programs per final rule

3. **Reasonable Design**
   - Reasonable chance to improve health, not overly burdensome, not a subterfuge for discrimination based on health, and method chosen to promote health is not highly suspect
   - **New**: Outcome-based programs must provide “reasonable alternative” to qualify for reward for all individuals who do not meet the initial standard, regardless of medical condition

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4. Uniform Availability and Reasonable Alternatives

- Full reward must be available to individuals who satisfy a “reasonable alternative” standard (or may waive standard)
- Pay for cost of alternative, make program available or assist in finding, New: time commitment must be reasonable and Revised: must accommodate recommendations of an individual’s personal physician if plan standard is not medically appropriate
- **Activity-only:** Due to a medical condition, plan standard would be medically inadvisable or unreasonable difficult. May require physician verification, New: “if reasonable under the circumstances”
- **Outcome-based:** New: Reasonable alternative must be furnished on request to any individual who does not meet initial measured standard. Also new “special rules” may apply.

5. Notice to Participants

- New: Sample language provided in final rule
Wellness Incentives and Premium Tax Credits in Health Exchanges

- **General “firewall” rule:** Individuals with access to affordable, minimum value coverage from an employer do not qualify for premium tax credit.

- **IRS May 2013 proposed rules:** Disregard any reduced premium or cost-sharing related to a wellness program, except for programs related to tobacco use.

- **Limited transition rule:** Proposed for wellness programs in place as of the date of the NPRM.
For more information:

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