



AMERICAN BENEFITS

COUNCIL

Wellness Programs and Proposed Regulations

Alliance for Health Reform

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Background

- 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 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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Health-Contingent Standards

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:

www.americanbenefitscouncil.org

The screenshot shows the homepage of the American Benefits Council. At the top, the logo and tagline "AMERICAN BENEFITS COUNCIL SHAPING THE WORLD OF CORPORATE BENEFITS POLICY" are visible. A navigation menu includes "ABOUT THE COUNCIL", "OUR ISSUES", "NEWS ROOM", "PUBLICATION LIBRARY", "RESOURCES", "CONTACT US", and "MEMBERS ONLY". A search bar is located in the top right. The main content area is divided into several sections: "SPOTLIGHT ON:" featuring a "PPACA Pay-or-Play Rules Released; Council Summary Available" article; "LATEST NEWS" with a Twitter announcement "The American Benefits Council is now on Twitter!"; "JOIN US!" with a "Become a Member" section; "OUR ISSUES" categorized into "HEALTH", "RETIREMENT", and "OTHER ISSUES"; and "FOLLOW US ON TWITTER" with a tweet from @benefitscouncil.

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