# Wellness and Nondiscrimination: Two important issues intersect

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# Overview

- History of wellness programs as they relate to HIPAA nondiscrimination rules for group health plans
- Wellness programs authorized under Senate health care reform bill
- Concern: wellness as a loophole for medical underwriting?
- Drawing a bright line

# Nondiscrimination in health insurance – HIPAA, 1996

"…a group health plan…may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than [that] for a similarly situated individual enrolled in the plan on the basis of any health status related factor…

[This rule] shall not prevent a group health plan…from establishing premium discounts or rebates…in return for adherence to programs of health promotion and disease prevention."

Public Health Service Act, Section 2703(b)

# 1997 Clinton Administration Regs

- Group health plans may establish premium discounts or rebates …in return for participation in a bona fide wellness program.
- Bona fide wellness programs establish discounts based on healthy behavior, <u>not</u> health status factors

# Example: rewards based on health status factors *prohibited*

- Plan X offers a premium discount to participants who adhere to a cholesterol-reduction wellness program…Enrollees work with a nutritionist. Later they are given a cholesterol test and those with a count under 200 receive a premium discount… Such discounts would discriminate impermissibly based on one or more health status-related factors. However, if instead, individuals…were entitled to receive the discount for complying with food diary and dietary requirements and were not required to pass a cholesterol test, the program would be a bona fide wellness program. (44 CFR§146.121)

# 2006 Bush Administration Regs

- Permits wellness programs that condition rewards based on satisfying a standard related to a health status factor.
- Such programs must meet 5 standards:
  - The program must be “reasonably designed” to promote good health or prevent disease
  - The maximum reward, or absence of penalty, is 20% of the cost of coverage (employer and employee share)
  - Participants must be given at least one chance per year to earn reward
  - Those who cannot meet standard due to medical condition must be offered a reasonable alternative standard
  - Disclosure in plan materials

# Example: rewards based on health status factors *permitted*

- Example: Plan X gives an annual premium discount of 20% of the cost of coverage to participants who adhere to a wellness program. The wellness program consists <u>solely</u> of giving an annual cholesterol test to participants. Those who achieve a count under 200 receive the premium discount for the year. The program offers an alternative standard for participants who cannot meet the standard due to a medical condition. The program is described in the health plan brochure. This program is a wellness program because it satisfies the five requirements.

# What is ‘reasonably designed?’

“The ‘reasonably designed’ requirement is intended to be an easy standard to satisfy… There does not need to be a scientific record that the methods promote wellness to satisfy this standard.  The standard is intended to allow experimentation in diverse ways of promoting wellness.  For example, a plan or issuer could satisfy this standard by providing rewards to individuals who participated in a course of aromatherapy.”

*Federal Register,* December 13, 2006, p. 75018

# Why cap reward at 20% of plan costs?

- The proposed regulations specified three alternative percentages:  10, 15 and 20
- The 20% limit allows plans and issuers to maintain flexibility in their ability to design wellness programs, while avoiding rewards or penalties so large as to have the effect of denying coverage or creating too heavy a financial penalty on individuals who do not satisfy an initial wellness program standard that is related to a health factor.

*Federal Register,* December 13, 2006, p. 75018

# Senate health reform bill

- Would codify 2006 Bush Administration regulations for group health plans
- Increase maximum reward/penalty to 30% (or up to 50%) of plan cost
  - $1,560 for self-only
  - $4,230 for family *
- "Reasonably designed" not defined
- Wellness adjustments can also be used by individual market insurers under a 10-state demonstration project
  - In demonstration states, low income premium subsidies offered in the Exchange will be calculated *without regard* to wellness premium adjustments
  - e.g., a person earning $14,700 pays $300 (2% of income) if subsidized, but $1,860 (13% of income) with wellness penalty*

* Based on CBO premium estimates for 2nd lowest cost "Silver" plan, November 30, 2009, applying 30% adjustment.

# Wellness incentive vs. medical underwriting?

**Wellness Incentive**

- Enrollee completes health risk assessment, provides info about health status/history
- Submit biometrics (e.g., blood and urine samples, cheek swab)
- Premium increased by $4,200/year if blood pressure, cholesterol, glucose levels above normal

**Medical Underwriting**

- Applicant completes underwriting form, provides info about health status/history
- Submit biometrics (e.g. blood and urine samples, cheek swab)
- Premium increased by $4,200/year if blood pressure, cholesterol, glucose levels above normal

# Could programs deter enrollment, shift costs to sick individuals?

- Benicomp Advantage wellness program raises annual deductible from $500 to $2,500.
- Employees earn $500 credit toward deductible for each health status test passed
  - blood pressure, BMI, evidence of tobacco, cholesterol
- How does this save employers money?
  - Reduction in health care claims due to healthier employees and the higher deductibles 12%-30%
  - Employees who choose other health care options

http://www.benicompadvantage.com/products/faq_employers.htm

# House health reform bill

- Wellness program grants for small business, up to 50% of program costs
  - Evidence based
  - Financial incentives not tied to premium, cost sharing
  - Privacy protections

- Public health investments in wellness
  - $15 billion/5 years Prevention and Wellness Trust
  - Funds research into effective wellness strategies
  - Research on subsidies, rewards to promote healthy behavior
  - Effective strategies included in essential benefits package
  - Health professions training in prevention, wellness
  - Childhood obesity prevention initiative

# Drawing a bright line

- To prevent wellness programs from undermining health reform protections against insurance discrimination:
  - Do not apply rewards, penalties to health insurance premiums, cost sharing
  - Apply incentives for healthy behaviors, not health status factors
  - Develop standards for ‘reasonably designed’ programs
    - Incentives based on evidence of what improves health
    - Provide support for healthier lifestyles