



Health Care Reform: Employer Wellness Programs & HIPAA Nondiscrimination

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HIPAA Permits Employer Sponsored Wellness Programs

Employers and coverage providers may offer rewards for all to participate in a wellness program, provided:

- The reward or penalty must not exceed 20 percent of the cost of employee-only coverage under the plan;
- The program must be reasonably designed to promote health or prevent disease;
- Employees must be eligible to qualify for the reward at least annually;
- The reward must be available to all similarly situated individuals; and
- A reasonable alternative standard or waiver to still obtain the reward must be available to individuals for whom it is unreasonably difficult to satisfy the otherwise applicable standard due to a medical condition.

Comparing Provisions on Employer Wellness Programs

Senate Bill

Codifies current HIPAA regulations and increases permissible reward.

Employers may discount the cost of health care coverage up to 30% to reward employee participation in a wellness program.

Employee rewards may be in the form of discounted or rebated premiums, reduced cost sharing, or by covering an extra benefit not otherwise provided.

Secretary of HHS has discretion to permit discounts up to 50% for employee only coverage.


House Bill

Wellness grants will be available for up to three years to small employers for up to 50% of costs incurred for a qualified wellness program. (Effective July 1, 2010)


Grants shall not exceed:

1. The product of \$150 x the number of employees; and
2. \$50,000 for the entire period of the grant.

Preserving HIPAA's Rules and Nondiscrimination Requirements



Under the Health Insurance Portability and Accountability Act's (HIPAA) nondiscrimination rules, group health plans and health insurance issuers are prohibited from denying – or charging more for – coverage based on an individual's health status. Any legislation that expands access to premium discounts and rebates for participation in wellness programs must preserve and protect these critical nondiscrimination rules.



HIPAA allows exceptions for wellness programs where the incentives are premium discount or rebate, a full or partial waiver of cost-sharing (deductibles, copays, or coinsurance, waiver of a surcharge, or the value of the benefit not otherwise offered).

Wellness Benefits Unrelated to “Health Factors”

If none of the conditions for obtaining a reward under a wellness program are based on an individual satisfying a standard related to a “health factor,” or if no reward is offered, the program complies with HIPAA’s nondiscrimination requirements.

Eligible Programs

- Reimbursement for cost of fitness center membership or weight management program (taxable unless physician-recommended)
- Diagnostic testing program that provides reward for participation rather than outcomes
- Program that encourages preventive care by waiving copayment or deductible requirement for costs of, for example, prenatal care or well-baby visits
- Program that reimburses employees for cost of smoking cessation programs without regard to whether the employee quits smoking
- Program that provides a reward to employees for attending a monthly health education seminar

Nondiscrimination Protections for Rewards Based on “Health Factors”

The Senate legislation affirms HIPAA’s nondiscrimination rules, codifying requirements for wellness programs that base rewards on satisfying a health related factor.

Health Factors

- Health status
- Medical condition, including both physical and mental illness
- Claims experience
- Receipt of health care
- Medical history
- Genetic information
- Evidence of insurability
- Disability

Wellness Program Requirements

- Individuals eligible for the program must have the opportunity to qualify for the reward at least once a year.
- The full reward shall be made available to all similarly situated individuals.
- A reasonable alternative standard- or waiver of the otherwise applicable standard - **to obtain the reward** must be available for those with medical conditions that make satisfaction of the applicable standard unreasonably difficult or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard.
- All plan materials that describe the terms of a wellness program must disclose the availability of this reasonable alternative standard.