



Employee Wellness Programs under the Affordable Care Act

Issue Brief

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The Patient Protection and Affordable Care Act (ACA) contains a number of provisions aimed at reducing the nation's healthcare costs through wellness and preventive care. This focus on prevention includes strengthening worksite wellness programs by updating existing laws and regulations and also creating new programs and opportunities for employers. The ACA will also, as of 2014, expand employers' ability to reward employees who meet health status goals by participating in wellness programs and increase the maximum reward available to participants in wellness programs to 30 percent of the total cost of coverage. This Issue Brief provides background and current information on implementing and providing wellness programs.

Background

The ACA creates new incentives and builds on existing wellness program policies to promote employer wellness programs and encourage opportunities to support healthier workplaces. On June 3, 2013, the Departments of Health and Human Services (HHS), Labor and the Treasury jointly released regulations for wellness programs to reflect the changes to existing wellness provisions made by the ACA and to encourage appropriately designed, consumer-protective wellness programs in group health coverage. These proposed rules took effect for plan years starting on or after Jan 1, 2014.

In large part, the provisions reflected the existing Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations, which prohibits health plans from discriminating against participants with regard to eligibility, benefits or premiums based on a health factor. Examples of health factors include health status, medical condition, genetic information, claims experience and disability. These new regulations expand on HIPAA by categorizing wellness programs into two separate types. Specifically, these wellness regulations provide guidance on how to remain HIPAA compliant when establishing and offering two

separate types of wellness programs, participatory wellness programs and health-contingent wellness programs.

Participatory Wellness Programs

Participatory wellness programs are programs that either do not provide a reward, or do not include any conditions for obtaining a reward based on an individual's performance in managing a set goal. For example, participatory wellness programs include those that:

- Reimburse all or part of the cost for memberships in a fitness center;
- Provide free diagnostic testing when there is no reward for participation and no reward based on the outcome;
- Encourage preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits;
- Reimburse employees for the costs of smoking cessation programs; and
- Provide a reward to employees for attending a monthly health education program.

A reward can be in the form of cash or a cash equivalent such as a gift card. Employers must make participatory wellness programs available to all similar groups of individuals, regardless of health status.

Health-Contingent Wellness Programs

Health-Contingent Wellness Programs require an individual to meet a health standard to obtain a reward. For these wellness programs, rewards can include a premium discount or rebate, lower cost-sharing requirements, the absence of a surcharge, or an extra benefit. In order to remain in compliance with HIPAA and the ACA, health-contingent wellness programs must meet the following five requirements:

- The reward for a health-contingent wellness program, together with the reward for other health-contingent wellness programs in the health plan, cannot not exceed 30 percent of the total cost of employee-only coverage, or 50 percent to the extent that the program is designed to prevent or reduce tobacco use;
- The program must be designed to improve health or prevent disease and must not be overly burdensome;

- Individuals must be given a chance to qualify for the reward at least once a year;
- The full reward must be available to a similar group of individuals; and
- A reasonable alternative must be provided for those with a medical condition that makes it unreasonably difficult to meet the wellness program standard. The availability of the alternative must be disclosed in wellness program materials.

Health-Contingent wellness programs are further divided into two groups: activity-only and outcome-based programs.

An activity-only wellness program requires an individual to complete an activity related to a health factor in order to obtain a reward, but does not require a specific health outcome from completing such activity. For example, an employer can establish a walking program that provides a reward in the form of free membership to a local gym to employees who complete a 30 minute walk for 12 or more weeks, irrespective of whether employees actually lose weight.

There is a concern that individuals might claim that it would be difficult or medically inadvisable to meet the wellness program standard when in actuality they could. In this case it is permissible for a plan to seek verification, such as a statement from an individual's personal physician, if a health factor makes it difficult for the individual to satisfy or if it would be medically inadvisable for the individual to attempt to satisfy the conditions of an activity-based wellness program.

An outcome-based wellness program requires an individual to reach or maintain a specific health outcome in order to obtain a reward. These include programs that provide a reward only if the individual attains a healthy weight, refrains from smoking or attains a certain biometric test result (*e.g.*, healthy blood pressure rate or glucose level). For example, plans would be able to target only those with high cholesterol for participation in cholesterol reduction programs, or individuals who use tobacco for participation in tobacco cessation programs, rather than all participants. The reward is based on health outcomes or participation in reasonable alternatives.

Additionally, Health-Contingent wellness programs require that a participant be provided with a reasonable alternative to comply. Although the regulations do not provide an official definition of a reasonable alternative, determining whether a health plan has provided a reasonable alternative include the following:

- If the reasonable alternative standard is completion of an educational program (such as a program to prevent disease or injury), the plan must assist employees in finding a similar program instead of requiring them to find a program on their own and may not require them to pay for the cost of the program themselves;

- The time commitment must be reasonable;
- If the reasonable alternative wellness program standard is a diet program, the plan is not required to pay for the cost of food but must pay for any membership or participation fee; and
- If the individual's personal physician states that a plan's standard program is not medically appropriate, the plan must provide a reasonable alternative that accommodates the recommendations of the individual's physician as to what would be medically appropriate.

Conclusion

Workplace wellness programs can reduce absenteeism, improve productivity, improve employee morale and retention as well as control increasing healthcare costs.

However, there is conflict regarding health-contingent wellness programs that tie rewards or penalties to people achieving standards related to health status, especially those that affect employee health insurance premiums or cost-sharing amounts. Some consumer advocate groups say that the ability for employers to make distinctions in health coverage costs among employees is unfair and could amount to employers monitoring their employees' health. Additionally, there is concern that wellness incentive programs will become a way to single out unhealthy people, or discriminate against people with pre-existing conditions. To address that, the new rules are designed to make sure that workplace wellness programs give all individuals a chance to earn discounts.

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