

HEALTHCARE REFORM UPDATE 2013-34



Highlights of the Wellness Program Requirements

The wellness program rules provide an exception to the general rule that employers may not take a person's health status into account with respect to eligibility, benefits, or premiums under a group health plan. Wellness programs, therefore, are allowed if they are designed to help employees improve their health; if they are primarily punitive they will not be allowed.

Rules for wellness programs have been in effect since 2007, but several new requirements apply beginning with the 2014 plan year. Under the 2014 rules, wellness programs are either "participatory" or "health-contingent." A participatory program is one that either has no reward or penalty (such as providing free flu shots) or simply rewards participation (such as a program that reimburses the cost of a membership to a fitness facility or the cost of a seminar on nutrition). As long as a participatory program is equally offered to all similar employees, no special requirements will apply to the program.

Requirements for Health-Contingent Wellness Programs

A number of rules apply to "health-contingent" wellness programs. Health-contingent wellness programs are programs that base incentives or requirements in any way on an employee's health status. Health status includes things like body mass index (BMI), blood glucose level, blood pressure, cholesterol level, fitness level, regularity of exercise, and nicotine use. A wellness program with health-contingent requirements must meet all of these requirements:

- Be reasonably designed to promote health or prevent disease
- Give employees a chance to qualify for the incentive at least once a year
- Cap the incentive at a certain percentage of the total cost of

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- coverage
- Provide a reasonable alternative way to qualify for the incentive for some individuals
- Describe the availability of the alternative method of qualifying for the incentive in written program materials

Incentive Limits

Beginning with the 2014 plan year, group health plans may have an incentive of up to 30 percent of the cost of coverage if the incentive is not related to tobacco usage. If there are multiple parts to the program (such as meeting certain BMI, blood pressure, cholesterol, and exercise targets) the maximum total reward or penalty for all parts of the program is 30 percent.

Plans may have an incentive of up to 50 percent of the cost of coverage for non-use of tobacco. If the program includes non-tobacco rewards or penalties, too, the maximum total reward or penalty is 50 percent of the cost of coverage.

Both the 30 percent and 50 percent incentives are based on the total cost of the coverage (the employer's share plus the employee's share). An incentive may either be a reward, such as a premium discount, or a penalty, such as a premium surcharge.

Reasonable Alternative Requirements

Health-contingent wellness programs must provide an alternative way to meet the program's requirements and provide the same incentive for meeting the alternative that is provided to individuals who meet the actual requirement. The reasonable alternative requirement depends on whether the program is an activity-only program or an outcome-based program. An activity-only program provides rewards or penalties for participating, or not participating, in things like a walking program, nutrition counseling, or a smoking cessation program, but doesn't require the person to meet a health standard, like reaching a certain BMI or quitting smoking. An outcome-based program is a program that rewards or penalizes based on achieving a certain health status, such as meeting targets for cholesterol level, BMI, blood pressure level, etc., or actually being tobacco-free.

In an activity-only program, the reasonable alternative only needs to be provided if it is unwise or unreasonably difficult for the person to participate because of a medical condition. For instance, an alternative would be needed to a walking program for an employee who had recently had hip replacement surgery. In an outcome-based program an alternative must automatically be available to everyone who does not meet the standard (since the goal of the program must be to improve health, not to punish those who are unhealthy). So, for example, if a program rewards employees with BMIs below a certain level, a reasonable alternative for overweight employees might be to complete a nutrition program. Employees who complete the nutrition program must also be given the reward that is provided for meeting the BMI standard.

Employers who choose to use an educational program as a reasonable alternative must locate or help the employee locate an acceptable program. The employer must pay the cost of the program, including membership fees. The employer is not required to pay the cost of food under a weight loss program, however. An employer may not limit the number of times an employee may use an alternative standard.

Employers must state that an alternative standard is available in all materials that describe the program, but details of the alternative standard do not need to be included. The Department of Health and Human Services (HHS) has provided model notices.

