

BREAKING NEWS



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FINAL REGULATIONS RELEASED ON INCREASED INCENTIVES FOR WELLNESS PROGRAMS

EXECUTIVE SUMMARY

- Wellness programs eligible to utilize incentive up to 30% for health-contingent plans meeting certain requirements such as offering reasonable alternatives
- Wellness programs with a tobacco use cessation component eligible for an additional 20% incentive amount



The Departments of Labor (DOL), Health & Human Services (HHS), and the Department of the Treasury recently issued final regulations on non-discriminatory wellness programs. Highlights are on the next page.

APPLICATION

- Applies to all grandfathered and non-grandfathered group health plans. Effective for all plan years beginning on or after January 1, 2014

REWARDS

Reward is defined as:

- The obtaining of a reward (e.g., discount or rebate of a premium or contribution, waiver of all or part of a cost share); or
- The imposition of a penalty (e.g., surcharge or other financial or non-financial disincentive)

Rewards are limited to:

- A maximum of a 30% reduction in the total premium for self-only coverage, for wellness programs without a tobacco cessation program component
- A maximum of a 50% reduction in total premium for self-only coverage, for wellness programs that include a tobacco cessation program component
- If a wellness program allows dependents of an employee to participate, the reward cannot exceed the above percentages for the employee plus dependent(s) total premium (Note: If a member of the family unit fails the wellness program, the premium reward shall be re-apportioned in a reasonable manner)
- For small group employers (defined as employers with less than 50 or more full-time and/or full-time equivalent employees), carriers may implement a tobacco use surcharge (1:1.5 ratio), in connection with a wellness program

DEFINITION & REQUIREMENTS FOR PARTICIPATORY WELLNESS PROGRAMS

Definition of a participatory wellness program:

- Participatory wellness programs do not provide a reward and are purely based upon participation. Examples include :
 - Reimbursement for a membership to a fitness center
 - A diagnostic test program that provides a non-outcome-based reward for participation
 - Attending a monthly no-cost health education seminar

Requirements for a participatory wellness program:

- Must be made available to all similarly situated individuals, regardless of health status
- A plan will not be considered discriminatory if an individual does not participate because of a reason that is not related to a health status

DEFINITION & REQUIREMENTS FOR HEALTH-CONTINGENT WELLNESS PROGRAMS

Definition of a health-contingent wellness program:

- A health-contingent wellness program is designed to reward behavior related to a health factor or activity. Examples include:
 - Dieting programs
 - Body Mass Index (BMI) reduction programs
 - High glucose, high blood pressure, and high cholesterol reduction programs

DEFINITION & REQUIREMENTS FOR HEALTH-CONTINGENT WELLNESS PROGRAMS (CONTINUED)

Design of a health-contingent wellness program:

- The design of the health-contingent wellness program should:
 - Be reasonably designed to improve health and prevent disease
 - Not designed to be:
 - Overly burdensome;
 - Discriminatory based upon any health factor; or
 - Have participation based upon questionable criteria
 - May be based upon the Center for Disease Control's (CDC) Guide to Community Preventative Services for guideline "best practices"

Health-contingent wellness programs, two sub-categories:

- Health-contingent wellness programs are broken into two sub-categories: Activity-based wellness programs and outcome-based wellness programs
 - Activity-based wellness programs require an individual to perform or complete an activity related to a health factor in order to obtain a reward. Examples include:
 - Walking
 - Dieting
 - Exercising
- Outcome-based wellness programs require that an individual must attain a specific health outcome in order to obtain a reward. A typical example of this includes:
 - A measurement, screening, or test to develop an initial standard; and
 - A larger program that targets individuals who do not meet the initial standard to participate in wellness activities, in hopes of improving their overall health

UNIFORMITY STANDARD & REASONABLE ALTERNATIVE STANDARD FOR HEALTH-CONTINGENT WELLNESS PROGRAMS

Uniformity standard and reasonable alternative standard defined:

- Health-contingent wellness programs must include two safe-guards against discrimination:
 - The uniformity standard – The full reward under a health-contingent wellness program must be available to all similarly situated individuals
 - The reasonable alternative standard – If an individual is unable to satisfy the requirements for a reward based upon an initial standard / goal, the same full reward must be given to an individual that meets the requirements of an employer created reasonable alternative standard for that plan year
 - Example: Five Pigs Corporation has a wellness program that offers a reward to employees who run one mile a week (i.e., initial standard). The wellness program reward is a premium discount. Wee Wee Piggy cannot run, due to a tight ham-string. Five Pigs Corporation offers, as a reasonable alternative standard, the ability to walk one mile, in lieu of running, to earn the full reward. Wee Wee Piggy has the ability to complete the reasonable alternative standard, and earns the full reward

UNIFORMITY STANDARD & REASONABLE ALTERNATIVE STANDARD FOR HEALTH-CONTINGENT WELLNESS PROGRAMS (CONTINUED)

Reasonable alternative standard requirements:

- Many factors will be looked at to determine if the reasonable alternative standard is deemed acceptable. These factors may include:
 - If the reasonable alternative standard is an educational program, the employer must assist the employee in finding the program, and no cost may be associated with such program
 - The time commitment of the reasonable alternative standard must be reasonable (e.g., cannot be one hour a day, every day of the week)
 - If the reasonable alternative standard is a diet program, the participant should not be required to pay for the cost of food, but may pay a membership or participation fee
 - If an individual's personal physician states that a plan's initial standard is not medically appropriate for that individual, the reasonable alternative standard must accommodate the physician's recommendations for a medically appropriate alternative
- An employer may also offer a waiver, so that the employee may qualify for the full reward, without having to meet the initial standard

Providing notice to employees for ability to participate in the reasonable alternative standard:

- An employer must disclose the opportunity for an employee to participate in the reasonable alternative requirement (or a waiver of the initial standard) to qualify for a reward
- The reasonable alternative standard should be disclosed along with all plan materials of the health-contingent wellness program, and shall include:
 - Contact information for obtaining information on the reasonable alternative standard; and
 - A statement that recommendations by an individual's personal physician will be accommodated; and

Note: For outcome-based wellness programs, this disclosure must also be included in any disclosure to the individual for not satisfying the initial outcome-based standard

- If the plan materials only mention that such a program is available, without describing its terms, then the disclosure is not required with that specific material
 - Example: A Summary of Benefits and Coverage (SBC) that mentions that cost sharing may vary based on participation in a diabetes wellness program, without describing the standards of the program, would not trigger a disclosure requirement. However, a plan disclosure that references a premium differential based upon tobacco use is a disclosure describing the terms of the health-contingent wellness program, therefore, it must include the disclosure regarding the availability of a reasonable alternative standard for a premium discount

UNIFORMITY STANDARD & REASONABLE ALTERNATIVE STANDARD FOR HEALTH-CONTINGENT WELLNESS PROGRAMS (CONTINUED)

Reasonable alternative standards in relation to activity-based and outcome-based programs

- Activity-based wellness programs
 - For activity-based wellness programs, a plan may seek verification (such as a physician's notice) that a health factor makes it unreasonably difficult for the individual to satisfy the initial standard for qualification of a reward, if doing so is reasonable under the circumstances (subject to HIPAA requirements, and other Federal and State privacy disclosure, and confidentiality regulations)
 - Under an activity-based wellness program, a reasonable alternative standard only needs to be offered to those individuals who may find the initial standard activity unreasonably difficult due to a medical condition, or for whom it is medically inadvisable to attempt to satisfy the requirement
- Outcome-based wellness programs
 - For outcome-based wellness programs a plan may not seek verification that a health factor makes it unreasonably difficult for the individual to meet the initial standard for qualification for a reward, therefore, a reasonable alternative standard must be offered regardless of the reason for failing the initial standard for qualification of the reward
 - Additional time must be provided to an individual to achieve the reasonable alternative standard, if the participant is unable to satisfy the initial standard
 - Example: The initial standard is to achieve a BMI of 30. The reasonable alternative standard cannot require an employee to then have a BMI of 31 for the very same day of testing for the BMI of 30. However, the reasonable alternative standard could be a reduction in BMI over a realistic period of time
 - A second reasonable alternative standard must also be offered to the participant, by way of complying with the recommendations of the participant's personal physician
- Retroactive treatment of completion of the reasonable alternative standard
 - If an individual meets the requirements of the reasonable alternative standard, they are treated as if they completed the initial standard. Therefore, the discount will apply retroactively to the beginning of the plan year. Payments may be made on the retroactive discounts on a pro-rata basis over the remainder of the year, so long as it is a reasonable method and the full amount of the reward is reimbursed. Pro-rata payments cannot be made in the following year
 - Example: On January 1, Froggy fails to pass the initial standard of being able to jump two feet. On March 31, Froggy passes the reasonable alternative standard, which is jumping only one foot. The reward for the months of January 1 to March 31 will be credited to Froggy on a pro-rata basis, from April 1 to December 31 of the current year



UNIFORMITY STANDARD & REASONABLE ALTERNATIVE STANDARD FOR HEALTH-CONTINGENT WELLNESS PROGRAMS (CONTINUED)

- Other considerations for the reasonable alternative standard:
 - For outcome-based programs, including tobacco cessation, weight loss, or weight management programs, a plan cannot cease to provide a reasonable alternative standard merely because an individual was not successful in satisfying the initial standard
 - Example: Forest Corporation has a tobacco cessation program. Smokey the Turkey cannot stop smoking. Forest Corporation institutes an educational seminar as a reasonable alternative in Year 1. In Year 2, the plan may require a different reasonable alternative, such as complying with a recommendation from a physician, or a new nicotine replacement therapy. In Year 1 Smokey is not successful in satisfying the initial standard; however, for Year 2 Smokey satisfies the reasonable alternative standard and qualifies to receive the reward
 - If a reasonable alternative standard of a health-contingent wellness program is another health-contingent wellness program, that second alternative must also have a reasonable alternative standard
 - Example: Big Chicken Corporation's health-contingent wellness program states that employees run one mile a week, which is the initial standard to qualify for a reward in the wellness program. Birdman cannot run, due to a missing thigh. Big Chicken Corporation, as a reasonable alternative standard, allows Birdman the ability to walk one mile, in lieu of running, to earn the full reward, under another health-contingent wellness program. Birdman cannot complete the second reasonable alternative standard because of his missing thigh, so Big Chicken Corporation must offer to Birdman another reasonable alternative standard (e.g., the ability to take a one hour class on flying exercises), which Birdman can complete

ADDITIONAL INFORMATION

Employers who have or plan to implement a wellness program should be aware of its different categories, and the specific regulations surrounding each program. For further review of these final regulations, go to: http://www.ofr.gov/OFRUpload/OFRData/2013-12916_PI.pdf

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