



Final Rules on Wellness Programs

June 11, 2013

The Affordable Care Act (ACA) includes provisions to encourage the use of wellness programs related to group health coverage. Effective for plan years beginning on or after **Jan. 1, 2014**, ACA adopts the existing HIPAA nondiscrimination requirements for health-contingent wellness programs, while also increasing the maximum reward that can be offered under these programs.

On May 29, 2013, the Departments of Labor, Health and Human Services and the Treasury (Departments) released [final regulations](#) that implement ACA's nondiscrimination requirements for wellness programs. The final regulations clarify and reorganize the rules outlined in previous [proposed regulations](#). They are intended to ensure that every individual participating in a wellness program can receive the full amount of any reward or incentive, regardless of any health factor.

The regulations apply to both grandfathered and non-grandfathered group health plans and group health insurance coverage for plan years beginning on or after Jan. 1, 2014.

CATEGORIES OF WELLNESS PROGRAMS

Employment-based wellness programs can be divided into two general categories: *participatory wellness programs* and *health-contingent wellness programs*. This distinction is important because participatory wellness programs are not required to meet the same nondiscrimination standards that apply to health-contingent wellness programs.

-Participatory Wellness Programs

Participatory wellness programs either do not require an individual to meet a health-related standard to obtain a reward or do not offer a reward at all. Examples of these programs include a fitness center reimbursement program, a diagnostic testing program that does not base any reward on outcomes, a program that reimburses employees for the costs of smoking cessation programs, regardless of whether the employee quits smoking, and a program that provides rewards for attending a free health education seminar.

Participatory wellness programs comply with the nondiscrimination requirements without having to satisfy any additional standards, *as long as participation in the program is made available to all similarly-situated individuals, regardless of health status*. There is no limit on financial incentives for participatory wellness programs.

-Health-contingent Wellness Programs

Health-contingent wellness programs require individuals to satisfy a standard related to a health factor in order to obtain a reward. There are two types of health-contingent wellness programs:

- **Activity-only wellness programs** require an individual to perform or complete an activity related to a health factor in order to obtain a reward (for example, walking, diet or exercise programs). Activity-only wellness programs do not require an individual to attain or maintain a specific health outcome.
- **Outcome-based wellness programs** require an individual to attain or maintain a certain health outcome in order to obtain a reward (for example, not smoking, attaining certain results on biometric screenings or meeting exercise targets).

STANDARDS FOR HEALTH-CONTINGENT WELLNESS PROGRAMS

-Size of Reward

The new rules contain provisions related to health-contingent wellness programs, which require individuals to satisfy a standard related to a health factor in order to obtain a reward. Consistent with the ACA, the regulations increase the permissible reward for meeting a health-related standard to **30 percent** of the total cost of employee-only coverage (or **50 percent**, if the program is designed to prevent or reduce tobacco use).

-Frequency of Opportunity to Qualify

The final regulations retain the requirement that health-contingent wellness programs provide eligible individuals with an opportunity to qualify for the reward **at least once per year**. This requirement applies to both activity-only and outcome-based wellness programs.

-Reasonable Design

The final regulations continue to require that health-contingent wellness programs be reasonably designed to promote health or prevent disease, whether activity-only or outcome-based. To be considered reasonably designed to promote health or prevent disease, the final regulations require **outcome-based wellness programs** to provide a reasonable alternative standard to qualify for the reward for all individuals who do not meet the initial standard that is related to a health factor.

-Uniform Availability and Reasonable Alternative

The final regulations require that the full reward under a health-contingent wellness program, whether activity-only or outcome-based, be available to all similarly situated individuals and provide a reasonable alternative standard.

- **Activity-Only Wellness Program** – A reasonable alternative standard (or waiver of the otherwise applicable standard) must be provided for any individual for whom it is unreasonably difficult due to a medical condition to satisfy, or medically inadvisable to attempt to satisfy, the otherwise applicable standard.
- **Outcome-Based Wellness Program** - A reasonable alternative standard (or waiver of the otherwise applicable standard) must be provided to all individuals who do not meet the initial standard based on a measurement, test or screening, regardless of any medical condition or other health status.

-Notice of Other Means of Qualifying for the Reward

Like the proposed regulations, the final regulations require plans and issuers to disclose the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard) in all plan materials describing the terms of a health-contingent wellness program (both activity-only and outcome-based).

The final regulations clarify that the disclosure must include contact information for obtaining the alternative and a statement that recommendations of an individual's personal physician will be accommodated. For **outcome-based wellness programs**, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard.

Please contact Lawley Benefits Group if you would like additional details on Wellness Program requirements.

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