

Wellness Programs and the Affordable Care Act

Types of Wellness Programs

Participation Based Programs

- ◇ Don't offer a reward, or
- ◇ Provide reward without regard to health status
- ◇ In general, not subject to nondiscrimination rules as long as program is available to all similarly situated individuals
- ◇ Examples:
 - Reimburses of fees to fitness centers
 - Reimburses for diagnostic tests without regard to outcome
 - Rewards to attend no-cost health educations seminars

Types of Wellness Programs

Health-Contingent Programs

◇ Two Major Categories

- **Activity Only** – Requires individual to complete an activity or program related to a health factor to obtain a reward
 - ◇ Examples: Walking, weight loss or exercise programs
- **Outcome Based** – Requires individual to attain or maintain a specific health outcome. Generally, two tiers:
 1. A measurement, test or screening as part of an initial standard; and
 2. A larger program that targets individuals who do not meet the initial standard
 - Examples: Meeting with a health coach, taking a fitness/health course, adhering to a health improvement action plan

Requirements for Health Contingent Programs

Health Contingent Programs must satisfy the following five requirements to avoid discrimination:

- ◇ Chance to Qualify
- ◇ Reward Limit
- ◇ Reasonable Design
- ◇ Reasonable Alternatives Available
- ◇ Disclosure of Reasonable Alternatives

Chance to Qualify

- ◇ Must be able to qualify for the reward at least once per year

Reward Limits

- ◇ Cannot exceed 30% of the cost of coverage - 50% for programs to reduce or prevent tobacco use
- ◇ “Cost of Coverage” means:
 - Both employer and employee portions
 - If only Employees participate – cost of employee-only coverage is used
 - If family members participate – reward % is based on the total cost of the coverage in which Employee and dependents are enrolled
- ◇ Can offer more than one reward
 - Total that is not related to tobacco use can't exceed 30%
 - If use both rewards, can't exceed 50%

Reasonable Design

- ◇ Program must promote health and can't discriminate based on a health status factor
- ◇ Health Status Factors:
 - Health status
 - Medical condition
 - Claims experience
 - Receipt of health care
 - Medical History
 - Genetic Information
 - Evidence of Insurability
 - Disability

Reasonable Alternatives Standard

- ◇ Must provide a reasonable alternative for all health-contingent rewards at no cost to individual
- ◇ If individual satisfies the alternative, the same full plan year reward must be provided, even if satisfied mid-plan year
- ◇ Time commitment to complete alternative must be reasonable
- ◇ If individual works with own doctor, doctor's recommendations must be accommodated
- ◇ Must continue to provide reasonable alternative even if individual was not previously successful in satisfying the standard

Notice of Alternative Availability

- ◇ Must disclose the availability of a reasonable alternative standard to qualify for the reward in plan materials
- ◇ Outcome based programs must include this notice in any disclosure to an individual who did not meet the initial standard

More Guidance

- ◇ Instead of providing a reasonable standard, may waive applicable standard and provide the reward
- ◇ If alternative is Education Program – Must make the program available at no cost to the individual
- ◇ Time to complete the alternative must be reasonable
- ◇ If alternative is a Diet Program – Not required to pay for food but must pay for membership fees
- ◇ If individual's physician states the standard is not medically appropriate, must provide an alternative that accommodates the physician's recommendations

Keep in Mind

- ◇ These rules only address HIPAA and ACA compliance
- ◇ Must also look at:
 - ADA
 - GINA
 - ERISA
 - EEOC
 - COBRA
 - State/Local Laws

Implementation Strategies

- ◇ Be aware of all applicable Federal and State laws
- ◇ Plan and build the program over several years
- ◇ Set reasonable and achievable targets
- ◇ Be lenient with reasonable alternatives

Is Your Program Compliant?

◇ If you offer wellness rewards based on satisfaction of a health factor and if you answer “NO” to any of these questions, your wellness program may not be compliant:

1. Chance to Qualify:

- Do individuals have a chance to qualify for the reward at least once per year?

2. Amount of Reward

- Is the reward for all health-contingent programs less than 30% of the cost of employee-only coverage?
- If tobacco cessation is part of the program, is the total wellness reward less than 50% of the cost of employee-only coverage?

Is Your Program Compliant? (cont'd)

3. Reasonable Design:

- Does the program have a reasonable chance of improving health or preventing disease without discriminating based on a health factor?

4. Reasonable Alternative Standard:

- Does the program offer a reasonable alternative for those who don't meet a health factor?
- Is the same full award provided to individuals who satisfy the reasonable alternative standard as those who meet the original standard, even if the standard is complete mid-year?
- Do you provide alternative programs or assist individuals in finding them?
- Is the alternative program provided at no cost to the individual?
- Is the time commitment of the alternative reasonable?

Is Your Program Compliant? (cont'd)

5. Notice of Alternative Availability

- Do all plan materials describing the health-contingent program disclose availability of a reasonable alternative standard?
- Is contact information provided in the notice?
- Does the notice state that the individual's physician's recommendation will be accommodated?