

# Health Care Reform: Wellness Programs

Under the Affordable Care Act, employers can offer increased incentives to employees for participation in a wellness program or for meeting certain health status targets beginning in 2014. The law will permit rewards or penalties such as premium discounts of up to 30 percent of the cost of coverage.

## What is a Wellness Program?

A wellness program is a program that promotes health or disease prevention for program participants.

## How does the discount work exactly?

The discounted cost of health insurance is the cost of the plan between the employer and the employee. It is not a potential reduction in costs from the health insurer and the company.

## Different Types of Wellness Programs

### Participatory wellness programs

Participatory wellness programs are those programs that either do not provide a reward or do not include any conditions for obtaining a reward that are based on an individual satisfying a standard related to a health factor. Examples include programs that reimburse employees for all or part of the cost of a fitness center or diagnostic testing programs that provide a reward for participation and not on outcomes.

### Health-contingent wellness programs

Health-contingent wellness programs require an individual to satisfy a standard related to a health factor to obtain a reward. Note there are two distinct health-contingent wellness programs and both of these are subject to the five key requirements listed below and are defined as follows:

- **Activity-only wellness programs:** These programs require an individual to perform or complete an activity related to a health factor in order to obtain a reward but does not require an individual to attain or maintain a specific health outcome. Examples include walking, diet, or exercise programs.
- **Outcome-based wellness programs:** These programs require an individual to attain a specific health outcome (such as not smoking or certain results on biometric screenings) in order to obtain a reward. Examples include programs testing individuals for risk factors such as high cholesterol or high blood pressure and providing a reward to employees identified as within a normal or healthy range, while requiring employees who are identified as outside the normal or healthy range to take additional steps to obtain the same reward.

Standard requirements that health-contingent wellness programs must meet in order to comply with

1. **Frequency of Opportunity to Qualify.** Both programs must give individuals eligible for the program an opportunity to qualify for the reward at least once per year.

2. **Size of Reward.** The reward for both programs must not exceed 30% of the total cost of coverage. The percentage can be increased to 50% if the wellness program is designed to prevent or reduce tobacco use.

3. **Reasonable Design.** The program must be reasonably-designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health or preventing disease in participating individuals and it is not overly burdensome.

4. **Reasonable Alternative Standard.** The full reward must be available to all similarly situated individuals. With respect to an activity-only wellness program, this standard is met if the program provides a reasonable alternative standard for obtaining a reward to any individual for whom it is either unreasonably difficult due to a medical condition to meet the otherwise applicable standard or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard. Under this program type, it is permissible to seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable to attempt to satisfy the otherwise applicable standard.

With respect to an outcome-based wellness program, this requirement is met if the program provides a reasonable alternative standard for obtaining the reward to any individual who does not meet the initial standard based on a measurement, test or screening that is related to a health factor. It is not permissible for a plan or issuer to seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard.

All of the facts and circumstances are taken into account in determining whether a plan or issuer has provided a reasonable alternative standard, including but not limited to the following:

(i) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available instead of requiring an individual to find such a program unassisted, and may not require an individual to pay for the cost of the program.

(ii) The time commitment required must be reasonable

(iii) If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.

(iv) If an individual's personal physician states that a plan standard is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans

and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

**5. Notice of Availability of Reasonable Alternative Standard.** The plan or issuer must disclose in all plan materials describing the terms of the activity-only wellness program the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining the reasonable alternative standard and a statement that the 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 the initial outcome-based standard.

In summation, although the requirements to comply with issuing or instituting a company based wellness program seem a bit much, most basic wellness programs should constitute an approved wellness program. There are several good quality third party wellness plans that a company could purchase the services of or the company could design and implement their own as long as the above mentioned guidelines are met.

As the Affordable Care Act continues to take shape one of the most important take aways will be the responsibility that each employee and individual has to take ownership in their health and their health care. Wellness programs are a great example of this new changing dynamic.