

Wellness programs and the Affordable Care Act

Wellness programs are generally designed to improve the health and well-being of employees and their dependents and, to (hopefully) reduce medical costs. Both their terms and their names can vary widely. They include programs for disease or case management and smoking cessation.

Wellness programs are subject to a variety of laws, including the ADA (Americans with Disabilities Act) and GINA (the Genetic Information Non-discrimination Act) that are beyond the scope of this article. Wellness programs that are related to group health plans are subject to HIPAA nondiscrimination rules, which prohibit a plan from charging similarly-situated individuals different premiums based on a health factor. The ACA (Affordable Care Act) codified the HIPAA nondiscrimination rules for wellness programs and permits certain "rewards" for participating in wellness programs, as long as the programs meet certain requirements.

Final regulations were issued last month to assist employment-based wellness programs in complying with the ACA. They establish requirements for health-based wellness programs. The requirements do not apply to "participatory" wellness programs that do not require satisfaction of a health standard in order to obtain a reward. Examples of participatory programs include employer payment of health club memberships, rewards for participating in biometric screening, regardless of results, and rewards or reimbursements for smoking cessation programs, regardless of whether the employee quits.

"Health-contingent" programs require an individual to satisfy a standard related to a health factor in order to obtain the reward. Such programs must meet the requirements of the rules. The rules describe two different categories of health-contingent programs.

"Activity-based" programs require the performance of an activity related to a health factor to obtain a reward, but do not require attainment of a specific outcome. Examples include walking, diet or exercise programs where some individuals may be unable to participate or have difficulty doing so due to a health factor such as asthma or recent surgery.

"Outcome-based" programs require an individual to attain or maintain a specific health outcome in order to obtain a reward. Examples include rewards for not smoking or for attaining certain results in biometric screening.

Several requirements apply to both types of health-contingent programs. The program must be "reasonably designed to promote health or prevent disease" and the employee must have the opportunity to qualify for the reward at least annually. The reward may not exceed the "applicable" percentage of the cost of coverage under the plan, currently 20 percent. Effective 2014, the limit is increased to 30 percent, or 50 percent, for tobacco-based programs. The "reward" may be in the form of premium discount or avoiding a premium surcharge.

The employer must also provide a reasonable alternative for obtaining the reward. For activity-based programs, an alternative is required if it is unreasonably difficult or medically inadvisable for the individual to meet the standard. The employer may require verification from the employee's physician. The alternative does not have to be established in advance. Instead, it may be determined on an "ad hoc" basis, upon request of the individual. For example, if the program requires walking during a work break three times per week and an employee has mobility issues, the alternative could be a substitute activity suggested by the employee's physician.

**ALICE
EASTMAN HELLE**
is an attorney at
BrownWinick



Waiving the requirement entirely is also an acceptable alternative.

The reasonable alternative rule is the same for outcome-based programs, except that physician verification cannot be required. The rule applies to anyone who does not meet the initial health standard. For example, if a program requires a BMI (body-mass index) within a certain range in order to qualify for the reward, a reasonable alternative must be made available to anyone who does not qualify. Alternatives could include participation in a walking program or employer-paid weight loss program. Note, however, that if the alternative is activity-based and is unreasonably difficult or medically inadvisable for the individual, another alternative must be offered. Again, waiving the requirement for the reward is an acceptable alternative.

Program materials must disclose the availability of a reasonable alternative to qualify for reward or the possibility of a waiver of the standard. The disclosure must include contact information for the program and a statement that the individual's physician will be accommodated. The rules include sample disclosure language ■



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ATTORNEYS AT LAW®

DES MOINES

666 Grand Avenue
Suite 2000, Ruan Center
Des Moines, IA 50309
515-242-2400 main
515-283-0231 fax

PELLA

616 Franklin Place
Pella, IA 50219
641-628-4513 main
641-628-8494 fax

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