



CLIENT BULLETIN

Proposed Wellness Program Regulations Issued Ups Rewards from 20% to 30% or More

The Departments of Health and Human Services (HHS), Labor and the Treasury jointly released proposed rules on wellness programs to reflect the changes to existing wellness provisions made by the *Affordable Care Act* (ACA) and to encourage appropriately designed, consumer-protective wellness programs in group health coverage.

These proposed rules would be effective for plan years beginning on or after January 1, 2014 for both grandfathered and non-grandfathered plans. (see *Preamble* at 77 FR 70620, 70622, left col.)

A copy of the proposed rule as published in the *Federal Register* is available by "[clicking here.](#)" A copy of just the DOL/ERISA version of the regulation with an added Table of Contents is available by "[clicking here.](#)"

These proposed regulations are similar in many ways to the pre-ACA 2006 final wellness regulations and continue to divide wellness programs into two categories:

- "*Participatory Wellness Programs,*" which include the majority of wellness programs, and
- "*Health-Contingent Wellness Programs.*"

"***Participatory wellness programs***" generally are available without regard to an individual's health status. These include, for example:

- A program that reimburses all or part of the cost for membership in a fitness center.
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.
- A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits.

- A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.
- A program that provides a reward to employees for attending a monthly no-cost health education seminar.
- A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment.

"**Health-contingent wellness programs**" generally require individuals to meet a specific standard related to their health to obtain a reward. Examples of health-contingent wellness programs include the following types of programs:

- Programs that provide a reward to those who do not use, or decrease their use of, tobacco.
- Programs that provide a reward to those who achieve a specified cholesterol level or weight as well as to those who fail to meet that biometric target but take certain additional required actions.

The proposed regulations require **health-contingent wellness programs** to follow certain rules, including:

- frequency of opportunity to qualify (annually),
- size of reward (30%, up to maximum of 50% of cost of coverage of tobacco cessation programs),
- uniform availability and reasonable alternative standards,
- reasonable design, and
- notice of other means of qualifying for the reward.

The proposed regulations increase the base size of the possible reward from 20% to 30% and allows a reward of up to 50% for programs that include tobacco cessation programs.

According to the *Preamble*, a critical element of the proposed regulations is the requirement that the reward under a *health-contingent wellness program* be uniformly available to all similarly situated individuals. To meet this requirement, a "reasonable alternative standard" (or waiver of the otherwise applicable standard) for obtaining the reward must be provided for any individual for whom, for that period, 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 the “reasonable design” standard:

- Programs must be reasonably designed to promote health or prevent disease. This means a program would have to offer a different, reasonable means of qualifying for the reward to any individual who does not meet the standard based on the measurement, test or screening. Programs must have a reasonable chance of improving health or preventing disease and not be overly burdensome for individuals.
- Programs must be reasonably designed to be available to all similarly situated individuals. Reasonable alternative means of qualifying for the reward would have to be offered to individuals whose medical conditions make it unreasonably difficult, or for whom it is medically inadvisable, to meet the specified health-related standard.
- Individuals must be given notice of the opportunity to qualify for the same reward through other means. These proposed rules provide new sample language for this purpose.

The “notice” requirement would require plans and issuers to *disclose the availability of other means* of qualifying for the reward or the possibility of waiver of the otherwise applicable standard in all plan materials *describing the terms of a health-contingent wellness program*.

If plan materials merely mention that a program is available, *without describing its terms*, this disclosure is not required. For example, a summary of benefits and coverage (SBC) that notes that cost sharing may vary based on participation in a diabetes wellness program, without describing the standards of the program, would not trigger this disclosure. (see *Preamble* at 77 FR 70620, 70625, mid-col.)

The proposed regulations contain numerous examples illustrating the rules which should be studied by anyone designing a wellness program and illustrate the rules on allowable programs, how to calculate the “reward” and more. Also included are various examples of “notice” language.

The regulations indicate the following “*model*” notice language would fulfill the plan’s “alternative means” notice requirement:

“Your health plan is committed to helping you achieve your best health status. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you to find a wellness program with the same reward that is right for you in light of your health status.”

Written comments are due by January 25, 2013. Contact information is listed in the beginning of the *Preamble*.

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