



# VCU Medical Center

## Office of Health Innovation

### Final Rule: Incentives for Nondiscriminatory Wellness Programs in Group Health Plans

**Description:** These final regulations increase the maximum permissible reward under a health-contingent wellness program offered in connection with a group health plan (and any related health insurance coverage) from 20 percent to 30 percent of the cost of coverage. The final regulations further increase the maximum permissible reward to 50 percent for wellness programs designed to prevent or reduce tobacco use. These regulations also include other clarifications regarding the reasonable design of health-contingent wellness programs and the reasonable alternatives they must offer in order to avoid prohibited discrimination.

### Major Provisions

These final regulations generally implement standards for group health plans and health insurance issuers offering group health insurance coverage with respect to the wellness program exception from the HIPAA nondiscrimination provisions in PHS Act section 2705, ERISA section 702, and Code section 9802, as amended by the Affordable Care Act.

Consistent with the 2006 regulations and PHS Act section 2705(j), these final regulations continue to divide wellness programs into two categories: “participatory wellness programs”, which are a majority of wellness programs, and “health-contingent wellness programs.”

### **Participatory Wellness Programs**

Participatory wellness programs are programs that are made available to all similarly situated individuals and 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 that is related to a health factor.

- Examples:
  - 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 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 provides a reward to employees for attending a monthly, no-cost health education seminar.
  - A program that reimburses all or part of the cost for membership in a fitness center.

- 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**

A health-contingent wellness program is a program that requires an individual to satisfy a standard related to a health factor to obtain a reward (or requires an individual to undertake more than a similarly situated individual based on a health factor in order to obtain the same reward). A health-contingent wellness program may be an activity-only wellness program or an outcome-based wellness program.

- These final regulations generally retain the five requirements for health-contingent wellness programs, but the regulations have been reorganized, subdividing health-contingent wellness programs into activity-only wellness programs and outcome-based wellness programs, to make it clearer to whom a plan or issuer is required to provide a reasonable alternative standard.
  1. Frequency of opportunity to qualify
    - Requires health-contingent wellness programs to give individuals eligible for the program the opportunity to qualify for the reward at least once per year.
  2. Size of reward
    - The total reward offered to an individual under all health-contingent wellness programs with respect to a plan cannot exceed the applicable percentage of the total cost of employee-only coverage under the plan, taking into account both employer and employee contributions towards the cost of coverage for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.
    - If, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the health-contingent wellness program, the reward cannot exceed the applicable percentage of the total cost of the coverage in which the employee and any dependents are enrolled (such as family coverage or employee-plus-one coverage).
  3. Reasonable design
    - Requires that health-contingent wellness programs be reasonably designed to promote health or prevent disease, not be overly burdensome, not be a subterfuge for discrimination based on a health factor, and not be highly suspect in the method chosen to promote health or prevent disease.
  4. Uniform availability and reasonable alternative standards

- 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.
- If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (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.
- The time commitment required must be reasonable.
- 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.
- 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.

#### 5. Notice of availability of reasonable alternative standard

- Requires 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 wellness programs).

### **Applicable Percentage**

These final regulations increase the applicable percentage from 20 percent to 30 percent, effective for plan years beginning on or after January 1, 2014, with an increase of an additional 20 percentage points (to 50 percent) for health-contingent wellness programs designed to prevent or reduce tobacco use.

To coordinate these regulations with the tobacco use rating provisions of PHS Act section 2701, these final regulations increase the applicable percentage for determining the size of the reward for participating in a health-contingent wellness program by an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is attributed to tobacco use prevention or reduction.

### **Application to Grandfathered Plans**

Under these final regulations, the same wellness program standards apply to grandfathered health plans and non-grandfathered plans.

