

# APPENDIX F

## HIPAA Regulations and Rewards

### STANDARDS-BASED WELLNESS PROGRAM

Wellness is a term that has been around awhile, but has been gaining popularity again due to the rising cost associated with health care. A “Standards-Based Wellness Program” is a program that must comply with HIPAA Nondiscrimination rules.

#### What is a Standards-Based Wellness Program?

The requirements for Standards-Based Wellness Programs apply only to a wellness program that provides a reward based on the ability of an individual to meet a standard that is related to a health factor, such as a reward conditioned on the outcome of a Health Risk Assessment Questionnaire or Biometric Screening, or the results of a specific screening (i.e. cholesterol, blood pressure, glucose).

HIPAA Nondiscrimination rules generally prohibit a plan or issuer from establishing rules for eligibility based on a health factor and from charging similarly situated individuals different premiums or contributions based on a health factor. Setting up a Standards-Based Wellness Program is an exception to this general rule. A plan or issuer may establish discounts, rebates, modifying co-payments or deductibles in return for adherence to programs of health promotion and disease prevention without meeting the requirements of a Standards-Based Wellness Program.

### HIPAA NONDISCRIMINATION RULES

The five basic requirements imposed on wellness programs that provide rewards based on a health factor are as follows:

**First** – The total reward for all wellness programs that require satisfaction of a standard related to a health factor is limited. The reward must not exceed 20 percent of the cost of employee-only coverage under the plan.\*

**Second** – The wellness program must be reasonably designed to promote good health or prevent disease for the individuals in the program.

**Third** – The program must allow participants to re-qualify for the reward under the program at least once per year.

**Fourth** – The reward under the program must be available to all similarly situated individuals. The program must allow any individual for whom it is unreasonably difficult due to a medical condition (or for whom it is medically inadvisable to attempt) to satisfy the initial program standard an op-



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portunity to satisfy a reasonable alternative. It is permissible to establish a reasonable alternative once a participant informs the plan that it is unreasonable for him or her.

**Fifth** – Any written plan materials that describe the health standard that must be met in order to qualify for the reward, also must disclose the availability of a reasonable alternative standard. However, if the material does not relate to the standards-based component of your program, it is not necessary to disclose a reasonable alternative. For example, if your program includes rewards for non-tobacco use and participation in a 10,000 Steps program, you only need to disclose the availability of a reasonable alternative standard in the materials that mention the non-tobacco use program.

Wellness programs come in a variety of forms. Results-oriented wellness plans that reward employees for maintaining healthy lifestyles can have a significant impact on employees' quality of life and your organization's bottom line. However, a compliant Standards-Based Wellness Program must be implemented for this type of plan under HIPAA Nondiscrimination regulations.

For more on nondiscrimination see the FAQ on the Department of Labor website: [http://www.dol.gov/ebsa/faqs/faq\\_hipaa\\_ND.html](http://www.dol.gov/ebsa/faqs/faq_hipaa_ND.html).

## BELOW ARE SEVERAL WELLNESS PROGRAM EXAMPLES:

### **Non Standards-Based Wellness Program** (no reward given based on a health factor)

- Encourage preventive care through the waiver of co-payments or deductible costs for routine yearly exams or well baby visits.
- Reimburse employees for the cost of health club memberships.
- Reimburse employees for the cost of a tobacco cessation classes or weight-loss classes, regardless of if they actually stop using tobacco or lose weight.

### **Standards-Based Wellness Program** (reward given based on a health factor)

- Give employees a \$10 reduction in premium amount if they score a certain number of points on a health risk assessment.
- Waive deductible amount for employees who improve their health risk assessment score by a certain number of points per year.
- Charge employees who do not use tobacco a lesser health insurance premium than those employees who do use tobacco.

### **Examples of a Reasonable Alternative**

- Offer the benefit to the employees without requiring the attainment of a certain score on a health risk assessment.
- If the program gives employees a 10% discount in premium amount if they score a certain level or below (200 for example) on a cholesterol test, a reasonable alternative may be to give the 10% discount to employees who can show they are complying with doctor's requirements to lower cholesterol, even though their cholesterol level may still be above the number required for the reward (201+).

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- If the program gives tobacco-free employees a 15% premium discount, a reasonable alternative might be to give tobacco users the 15% discount if they complete an approved tobacco cessation course, regardless of whether they actually quit using tobacco.

Note that an employer does not have to state what reasonable alternative it will require, only that a reasonable alternative will be made available. The following language can be used on all materials relating to attaining a health standard (this regulatory language meets the requirements of the fifth rule, above):

*If it is unreasonably difficult due to a medical condition for you to achieve the standards for a reward under this program, or if it is medically inadvisable for you to attempt to achieve the standards for the reward under this program, contact us at [www.livewellgreenville.org/workplace](http://www.livewellgreenville.org/workplace) and we will help you find a resource that may be able to help you develop another way to qualify for the reward.*

## Additional Compliance Issues to Consider When Designing Your Wellness Program:

- American with Disabilities Act (ADA)
  - As it relates to health and disability related inquiries and their voluntariness
  - <http://www.ada.gov/>
- The US Equal Employment Opportunity Commission (EEOC)
  - As it relates to the ADA's stance on voluntariness
  - <http://www.eeoc.gov/>
- Employee Retirement Income Security Act (ERISA)
  - Wellness programs may be "group health plans" and subject to ERISA
  - <http://www.dol.gov/dol/topic/health-plans/erisa.htm>
- Genetic Information Non-Discrimination Act (GINA)
  - As it relates to obtaining family health history in conjunction with incentives
  - <http://www.genome.gov/24519851>

*\*Under the Patient Protection and Affordable Care Act (PPACA), HIPAA Nondiscrimination rule number one may be affected, increasing the maximum incentive amount to 30%. The preliminary effective date for this increase is for plan years beginning on or after January 1, 2014.*

*The illustrations apply only to the HIPAA Nondiscrimination rules for Standards- Based Programs. Other legal and tax issues may arise when implementing a wellness program. This bulletin provides brief, general information, not legal advice. Employers are encouraged to consult with their legal counsel regarding wellness program compliance.*

*This appendix courtesy of M3 Insurance Solutions for Business*



