

The Affordable Care Act and Wellness Programs

The Affordable Care Act creates new incentives and builds on existing wellness program policies to promote employer wellness programs and encourage opportunities to support healthier workplaces. The Departments of Health and Human Services (HHS), Labor and the Treasury are jointly releasing proposed rules on wellness programs to reflect the changes to existing wellness provisions made by the Affordable Care Act and to encourage appropriately designed, consumer-protective wellness programs in group health coverage. These proposed rules would be effective for plan years starting on or after January 1, 2014.

The proposed rules continue to support workplace wellness programs, including “participatory wellness programs” which generally are available without regard to an individual’s health status. These include, for example, programs that reimburse for the cost of membership in a fitness center; that provide a reward to employees for attending a monthly, no-cost health education seminar; or that provides a reward to employees who complete a health risk assessment without requiring them to take further action.

The rules also outline amended standards for nondiscriminatory “health-contingent wellness programs,” which generally require individuals to meet a specific standard related to their health to obtain a reward. Examples of health-contingent wellness programs include programs that provide a reward to those who do not use, or decrease their use of, tobacco, or 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.

Protecting Consumers

In order to protect consumers from unfair practices, the proposed regulations would require health-contingent wellness programs to follow certain rules, including: Programs must be reasonably designed to promote health or prevent disease. To be considered reasonably designed to promote health or prevent disease, 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 intended to be simpler for individuals to understand and to increase the likelihood that those who qualify for a different means of obtaining a reward will contact the plan or issuer to request it.

Ensuring Flexibility for Employers

The proposed rules also implement changes in the Affordable Care Act that increase the maximum permissible reward under a health-contingent wellness program from 20 percent to 30 percent of the cost of health coverage, and that further increase the maximum reward to as much as 50 percent for programs designed to prevent or reduce tobacco use.

Evidence shows that workplace health programs have the potential to promote healthy behaviors; improve employees' health knowledge and skills; help employees get necessary health screenings, immunizations, and follow-up care; and reduce workplace exposure to substances and hazards that can cause diseases and injury. The proposed rules would not specify the types of wellness programs employers can offer, and invite comments on additional standards for wellness programs to protect consumers.

To read the proposed rule on wellness programs, please visit:

<http://www.ofr.gov/inspection.aspx>