



HEALTH CARE REFORM – SPECIAL EDITION

Wellness Programs Under Health Care Reform

LEGISLATIVE BRIEF

June 10, 2013

What seemed clear when the Affordable Care Act was passed in 2010 has been made transparent with the issuance of regulations by the Departments of Labor, Treasury and Health & Human Services on May 29, 2013. Worksite wellness programs are not only still legal under reform legislation, they are fully endorsed by federal regulators. The final regulations, which are effective for plan years starting in 2014, largely mirror existing HIPAA regulations that have controlled wellness incentives for years.

The final regulations confirmed that incentives remain encouraged, and, per the laws original text, increase permissible incentives to 30% of the total cost of medical coverage – and up to 50% for programs related to tobacco use. If the wellness program includes family members, the maximum incentive may be based on the total family cost of medical insurance. As before, incentives must be available at least once per year for all similarly situated employees, and may take many forms: cash, reduced cost sharing, increased benefits, or deposits to health based accounts such as HSA or HRA.

Rather than completely replace existing rules, the regulations issued on May 29 extend the existing approach to ensuring that wellness programs are fair and intended to improve employee health. As such, they continue the current practice of excluding the incentive cap from wellness programs that are participation-based (now referred to as “activity-based”). Under an Activity-Based program, an incentive is earned simply by participating in the activity such as walking, diet or exercise. No specific results are required to earn the incentive.

Under Outcome-Based programs, incentives are only earned when a certain result is reached. For example, a program which requires participants to lose a certain amount of weight, or achieve a set BMI (Body Mass Index) or Blood Pressure figure. When a wellness incentive is based on achieving an outcome, then several other requirements are triggered:

- The maximum incentive limit (30% or 50% of medical cost) is applied
- An alternative standard must be available.

- » Technically, the alternative standard applies to activity-based programs when a physician says that engaging in the activity is unreasonable, based on the individual's health. But, most employers simply offer the incentive in those cases.
- » For example, if an incentive is available based on achieving a certain BMI, an alternative might be engaging in a walking program, or make small progress towards that goal. For tobacco cessation awards, completing a smoking cessation program could earn the alternative standard. The employer must be reasonable, and must take into account an employee's physician's recommendations.
- » The availability of the alternate standard must be communicated.

In the past decade, the prevalence of worksite wellness programs has increased dramatically. As research has corroborated the universal value of such programs, more employers have begun offering such programs. There has been a slight slowdown among a subset of employers who were concerned that ACA might impose substantial new requirements. The final regulations confirm that wellness programs will continue to be endorsed by the government.

To read the regulations, click on this link:

<http://www.dol.gov/ebsa/pdf/workplacewellnessstudyfinalrule.pdf>

Another area of confusion has been the impact of incentives on an employer's insurance contribution strategy. With ACA imposing a maximum employee cost share of 9.5% of wages, those employers who wish to establish contribution formulae that approach the maximum level have been concerned about how to incorporate wellness incentives. On May 3, 2013, the IRS issued proposed rules answering this question.

The "bottom line" in combining wellness & affordability is that an employer must calculate employee premium cost sharing (payroll contributions) as follows:

- For tobacco related incentives – assume that all employees will earn the incentive. So, if your non smoker contributions are already at 9.5%, you are compliant, even if smoker contributions are higher.
- For all other Outcomes-Based incentives – assume that no employees will earn the incentive. Here, you must calculate based on the highest level of contribution, without regard to any incentive (discount, contribution, etc.)

To read the proposed rules, click on this link:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10463.pdf>

These most recent regulations are encouraging signs that the federal government has "discovered" the immense value of worksite wellness programs. Well designed Wellness programs can not only save you money through improved productivity and reduced claims costs, but can be an effective, low cost way to make you an employer of choice now that nearly every employer with whom you are competing will be offering comprehensive medical insurance. Leavitt clients are helping employees and their families improve lives, are winning awards for their plans, and saving money. Your Leavitt Account Team and our Wellness department can help you plan strategically, navigate all the rules and apply these latest regulations into your strategic planning for the 2014, and following, plan years.

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