

New Rules for Wellness Programs: Is Your District Ready?

Is your district in compliance with recently issued final rules regarding wellness programs?

By Lawrence Singer and Karen Johnson



Wellness programs have moved into the mainstream as a growing number of school districts have concluded that the health of an institution drives the health of its workforce and, conversely, the health of the workforce drives the health of the institution.

Wellness programs must be reviewed regularly, however, to ensure that they fit within a variety of legal boundaries. The Departments of Labor, the Treasury, and Health and Human Services recently issued a final rule regarding wellness programs offered by group health plans. The rule applies to all grandfathered and

nongrandfathered group health plans for plan years beginning on or after January 1, 2014.

The final rule increases the amount of the reward that may be provided through a wellness program. It also clarifies that programs that reward people who engage in certain types of activities, such as diet or exercise programs, generally will need to comply with the rules applicable to programs that require people to be healthy (e.g., maintaining certain cholesterol levels or being a nonsmoker). It also tightens the rules that apply to programs that require people to achieve specific health targets.

Current Programs

The final rule, which requires plan sponsors to distinguish between programs that are based on participation and those that are based on a result, continues and expands on the framework for current wellness programs. That framework includes both participatory wellness programs and health-contingent wellness programs.

Participatory wellness programs offer no reward or offer a reward merely for participating. Examples include fitness center cost-reimbursement programs and programs that reward participation in a smoking-cessation program without regard to whether the employee quits smoking. The only requirement for these programs is that they be available to all individuals regardless of their health status.

Health-contingent wellness programs require individuals to meet health-related standards in order to receive the reward. The reward may be a premium discount, reduced or waived cost sharing (e.g., deductible, copayment, or coinsurance), or avoidance of a premium surcharge. Examples include higher premiums for individuals who use tobacco products or lower premiums for employees who meet defined biometric standards. The final rule tightens some of the requirements for these programs.

Health-Contingent Programs

The final rule creates two categories of health-contingent wellness programs:

Activity-only wellness programs require an individual to complete an activity, such as walking, dieting, or exercising, that some individuals may be unable to do or may have difficulty doing because of their health (e.g., severe asthma, pregnancy, or recent surgery).

The final rule creates two categories of health-contingent wellness programs

Outcome-based wellness programs require an individual to achieve a specific health-related target, such as not smoking or attaining certain results on biometric screenings. Examples include programs that test individuals for specific medical conditions or risk factors or provide a reward to individuals in normal or healthy ranges.

Both types of health-contingent wellness programs are subject to the following rules:

Annual opportunity to qualify for the reward. Individuals must have the opportunity to qualify for the reward at least once each year.

Size of reward. The total reward offered to an individual cannot exceed a specified percentage of the total cost of employee-only coverage under the plan

The Return on Investment of Wellness Programs

Effective wellness programs use education, motivation, and support to promote a healthy work environment and reduce workforce costs while enabling employees to fully engage in their work.

Wellness programs cover a wide variety of different arrangements, and programs that are well



designed and implemented have the ability to generate a substantial return on investment. Studies have concluded that institutions with successful wellness programs experience an average of 16% lower health care costs and a 35% lower rate increase in costs than all other institutions.

(including employee and employer contributions). Previously, the maximum percentage was 10% for all programs. The percentages cannot exceed 50% for smoking cessation wellness programs and 30% for other types of programs.

Reasonable design. Health-contingent wellness programs must be reasonably designed to promote health or prevent disease. This standard is flexible, allowing plan sponsors to experiment with different ways of promoting wellness. Reasonableness is determined on a case-by-case basis.

Uniform availability and reasonable alternative. The reward must be available to all “similarly situated” individuals. This criterion generally requires that a reasonable alternative be available on request to any individual for whom it is unreasonably difficult to satisfy the standard because of a medical condition or for whom it is medically inadvisable to try to satisfy the standard.

The final rule describes some of the alternatives that will be considered reasonable. For example:

- If the alternative is an education program, the plan must make it available or help employees find one. It may not require an individual to pay for the cost of the program. The time commitment must be reasonable.
- If the alternative is a diet program, the plan must pay any membership fee, but it does not have to pay for food.

If the individual's personal physician states that a plan's alternative is not medically appropriate, the plan must provide a more accommodating alternative. For example, for plans requiring an individual not to use tobacco, a reasonable-alternative standard in the first year may be an education seminar. The individual who attends the seminar is entitled to the reward, regardless of whether he or she quits smoking. In the second year, the plan might try a different standard, such as complying with a new recommendation from the individual's personal physician or a new nicotine replacement therapy.

Notice of availability of reasonable alternative. Plans are still required to disclose the availability of the alternative way to qualify for the reward (or the possibility of a waiver) in plan materials that describe the terms of a health-contingent wellness program. The final rule provides new sample language to include in plan materials:

Your health plan is committed to helping you achieve your best health. 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 (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.

Outcome-Based Programs

The final rule includes additional requirements for outcome-based programs, which obligate an individual to achieve a specific health-related target. The extra requirements relate to the reasonable-alternative standard and to when a plan may seek verification from an individual's physician.

- The plan must provide a reasonable alternative to any individual who does not meet the initial standard. (In contrast, for activity-only programs, a reasonable alternative must be offered only to those for whom it is unreasonably difficult because of a medical condition to meet or attempt to meet the standard.)
- Participants must be able to use the reasonable alternative without having to obtain verification from their physicians that they have a health factor.

Full Reward

On occasion, certain individuals may take time to satisfy the reasonable alternative and qualify for the reward. In that case, the same full reward must be provided to those individuals as to individuals who meet the initial standard. Plan sponsors will have flexibility in determining how to provide the reward (e.g., retroactive payment or prorated payment over the rest of the plan year), but the individual must receive the full reward for that plan year.

The same applies in the case when the person takes the entire plan year to satisfy the reasonable alternative. In that situation, the plan sponsor may provide a retroactive payment within a reasonable time after the end of the plan year but may not provide prorated payments over the course of the entire next plan year.

Careful Implementation

Districts that have or are considering adding a wellness program must ensure that the program design complies with the enhanced requirements applicable to outcome-based programs, particularly with respect to the offer of a reasonable alternative.

When implemented carefully as part of a broader effort to create a healthy and effective workplace, wellness programs can yield significant return on investment for a district. A comprehensive review of plan documents and wellness programs now can avoid later enforcement issues and can increase the likelihood that the plan is operating in compliance with the law.

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