



Health Care Reform

LEGISLATIVE BRIEF

Brought to you by Myriad Benefits, LLC

Implications for Workplace Wellness Programs

The Affordable Care Act (ACA) included several reforms directed at promoting and improving the effectiveness of workplace wellness programs. Starting in 2014, employers can offer increased incentives to employees under health-contingent workplace wellness programs.

In addition, the ACA created a grant program for eligible small businesses that implement comprehensive workplace wellness programs. The ACA also authorized the Centers for Disease Control and Prevention (CDC) to provide employers with technical assistance regarding wellness programs.

On June 3, 2013, the Department of Health and Human Services (HHS), Employee Benefits Security Administration (EBSA) and Internal Revenue Service (IRS) collectively published [final regulations](#) on the ACA's nondiscrimination requirements for workplace wellness programs. These regulations [clarify and reorganize the rules outlined in proposed regulations](#), published on Nov. 26, 2012.

The final rules apply to both grandfathered and non-grandfathered group health plans and group health insurance coverage for plan years beginning on or after **Jan. 1, 2014**.

WELLNESS INCENTIVE INCREASE

Existing regulations under HIPAA permit wellness program incentives of up to 20 percent of the total cost of coverage, as long as the program meets certain conditions. Under the ACA, the potential incentive increases to **30 percent** of the cost of coverage in 2014 for employees participating in the wellness program or meeting certain health standards. Employers must offer an alternative standard to employees for whom it is unreasonably difficult or inadvisable to meet the initial standard. Following a governmental study on wellness programs, the ACA provides that the incentive may be increased to as much as 50 percent.

The final regulations formally adopt nondiscrimination rules for health-contingent wellness programs, such as the reasonable design requirement and the reasonable alternative standards they must offer in order to avoid prohibited discrimination. 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.

The final regulations also divide health-contingent wellness programs into two categories:

- **Activity-only wellness programs** require an individual to perform or complete an activity related to a health factor in order to obtain a reward (for example, walking, diet or exercise programs).
- **Outcome-based wellness programs** require an individual to attain or maintain a certain health outcome in order to obtain a reward (for example, not smoking, attaining certain results on biometric screenings or meeting exercise targets).

Additionally, the 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 maximum reward is further increased to **50 percent** of the cost of health coverage for health-contingent wellness programs designed to prevent or reduce **tobacco use**.

Implications for Workplace Wellness Programs

EMPLOYER WELLNESS GRANTS

The ACA created a \$200 million program for implementing comprehensive workplace wellness initiatives for 2011 through 2015. Under the program, grants will be available to eligible employers who provide their employees with access to a new workplace wellness program.

Eligible employers include businesses that:

- Employ fewer than 100 employees who work 25 hours or more per week; and
- Did not have a workplace wellness program as of March 23, 2010, the date of the ACA's enactment.

To be eligible for the grants, the wellness programs must be **made available to all employees**. In addition, the workplace wellness program must include:

- Criteria related to health awareness, including health education, preventive screenings and health risk assessments;
- Efforts to maximize employee engagement;
- Initiatives to change unhealthy behaviors and lifestyle choices; and
- A supportive environment at the workplace, including workplace policies to promote healthy eating, increased physical activity and improved mental health.

HHS is responsible for developing specific criteria for the grant program and application process. However, this guidance has not yet been issued.

TECHNICAL ASSISTANCE

The ACA authorized the CDC to provide employers of any size with access to technical assistance, consultation, resources and other tools to help evaluate, analyze and monitor their wellness programs. The CDC was also directed to conduct a national worksite survey to assess employment-based health programs.

Information on workplace health promotion is available on the [CDC website](#).

MORE INFORMATION

Myriad Benefits, LLC will keep you informed of any health care reform developments for workplace wellness programs.

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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