

## Health-Contingent Wellness Programs

On June 3, 2013, the Departments of the Treasury, Labor, and Health and Human Services jointly issued final rules regarding proposed amendments to regulations, to be consistent with the Affordable Care Act (ACA), relating to wellness programs in group health coverage. The final rules were first proposed on Nov. 26, 2012.

The final rules replace the current HIPAA wellness program rules and also implement the nondiscrimination provisions made applicable to the individual market by Section 1201 of the ACA. The wellness program exception to the prohibition on discrimination under the existing rules and the ACA applies to group health plans (and any health insurance coverage offered in connection with such plans), but does not apply to health insurance coverage offered in the individual market. The final rules apply to all grandfathered and non-grandfathered fully insured and self-funded group health plans for plan years beginning on or after Jan. 1, 2014.

As under the current rules, there are two types of wellness programs: participatory and health-contingent. Participatory wellness programs either do not provide a reward or do not include any conditions for obtaining a reward that are based on an individual satisfying a standard related to a health factor. Examples include programs that reimburse employees for all or part of the cost of fitness center and diagnostic testing programs that provide a reward for participation and do not base any part of the reward on outcomes. Participatory wellness programs are not subject to five key requirements to which health-contingent programs are as noted below.

Health-contingent wellness programs require an individual to satisfy a standard related to a health factor to obtain a reward. The final rules divide health-contingent wellness programs into the following two categories: (1) activity-only programs, and (2) outcome-based programs. These programs are subject to the five key requirements are defined as follows:

- **Activity-only wellness programs:** These require an individual to perform or complete an activity related to a health factor in order to obtain a reward but do not require an individual to attain or maintain a specific health outcome. Examples include walking, diet or exercise programs, which some individuals may be unable to participate in or complete (or have difficulty participating in or completing) due to a health factor such as severe asthma, pregnancy or a recent surgery.
- **Outcome-based wellness programs:** These require an individual to attain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward. Examples include programs that test individuals for specified medical conditions or risk factors (such as high cholesterol, high blood pressure, abnormal BMI or high glucose level) and provide a reward to employees identified as within a normal or healthy range, while requiring employees who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach or complying with a health care provider's plan of care) to obtain the same reward.



**For more information**

Consult your UnitedHealthcare representative if you have questions about what employers need to know about the final rule relating to wellness programs. Or, visit the United for Reform Resource Center at [uhc.com/reform](http://uhc.com/reform) and click the wellness provision.

## Five Key Requirements for Health-Contingent Wellness Programs

The five requirements for health-contingent programs generally are the same for activity-only wellness programs and outcome-based wellness programs; however, there are some differences as noted below:

- 1. Frequency of Opportunity to Qualify:** Both programs must give eligible individuals the opportunity to qualify for the reward at least once per year.
- 2. Size of Reward:** The reward for both programs, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed 30 percent of the total cost of coverage, except this percentage is increased to 50 percent to the extent that the wellness program is designed to prevent or reduce tobacco use.
- 3. Reasonable Design:** The programs must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals, and it is not overly burdensome, not a subterfuge for discriminating based on a health factor and not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all of the relevant facts and circumstances. To ensure that an outcome-based wellness program is reasonably designed, it must provide a reasonable alternative standard to qualify for the reward to any individual who does not meet the initial standard based on a measurement, test or screening that is related to a health factor.
- 4. Reasonable Alternative Standard:** The full reward must be available to all similarly situated individuals. With respect to an activity-only wellness program, this standard is met if the program provides a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining a reward to any individual for whom, for that period, it is either unreasonably difficult due to a medical condition to meet the otherwise applicable standard, or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard. Under this program type, if reasonable under the circumstances, it is permissible for a plan or issuer to seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable to attempt to satisfy the otherwise applicable standard.

With respect to an outcome-based wellness program, this requirement is met if the program provides a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward to any individual who does not meet the initial standard based on a measurement, test or screening that is related to a health factor. Under this program type, it is not permissible for a plan or issuer to seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard.

All of the facts and circumstances are taken into account in determining whether a plan or issuer has provided a reasonable alternative standard, including but not limited to the following:

- 1.** If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available instead of requiring an individual to find such a program unassisted, and may not require an individual to pay for the cost of the program.
- 2.** The time commitment required must be reasonable (e.g., requiring attendance nightly at a one-hour class would be unreasonable).
- 3.** If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.
- 4.** If an individual's personal physician states that a plan standard (including, if applicable, the recommendations of the plan's medical professional) is not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost-sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

To the extent that a reasonable alternative standard under either program is, itself, an activity-only wellness program, it must comply with the reasonable alternative standard requirements for this program type as noted above.

To the extent that the reasonable alternative standard is another outcome-based program, it must comply with the reasonable alternative standard requirements of this program type as noted above and is subject to the following special rules: First, the reasonable alternative standard cannot be a requirement to meet a different level of the same standard without allowing for additional time to comply that takes into account the individual's circumstances. Second, an individual must be given the opportunity to comply with the recommendations of the individual's personal physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by a plan or issuer, but only if the physician joins in the request.

**5. Notice of Availability of Reasonable Alternative Standard:** The plan or issuer must disclose in all plan materials describing the terms of the activity-only wellness program the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard), including contact information for obtaining the reasonable alternative standard and a statement that the recommendations of an individual's personal physician will be accommodated. For outcome-based wellness programs, this notice must also be included in any disclosure that an individual did not satisfy the initial outcome-based standard.

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