

Wellness Programs

The Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA) allows an increase in the maximum permissible awards in both “**participatory**” and “**health contingent**” wellness incentive programs.

PPACA increases maximum incentive rewards from 20% to 30% of the total cost of coverage. In addition, the proposed regulations further increase the maximum permissible incentive rewards to 50% for wellness programs that are designed to reduce or prevent tobacco use.

PPACA wellness regulations become effective for health plan years beginning on or after 1-1-2014.

Participatory Wellness Programs (PPACA)

29 CFR 2590.702 (f) (1) stipulates that a wellness program is “participatory” if none of the conditions for obtaining a reward under the wellness program are based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward).

Participation must be made available to all similarly situated individuals.

Examples of Participatory Wellness Programs

- A program that covers the cost of a fitness center membership
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes
- A program that encourages preventive care through the waiver of co-payment or deductible amounts under a group health plan (e.g., well baby visits, prenatal care, etc.)
- A program that reimburses individuals for the costs of participating in a smoking cessation program without regard to whether or not the individual quits smoking
- A program that provides a reward to individuals for attending a monthly free health educational seminar
- A program that provides a reward to individuals who complete a health risk assessment regarding their current health status, without further action (educational or otherwise) required by the individuals with regard to the health issues identified as part of the assessment.

Total cost of coverage

The PPACA regulations provide that the cost of coverage is determined based on the total amount of employer and employee premium contributions for the group health plan under which the employee and, if applicable, any dependents and/or spouses are covered.

Health Contingent Wellness Programs (PPACA)

29 CFR 2590.702 (f) (2) stipulates that a wellness program is a “health contingent” wellness program if any of the conditions for obtaining a reward are based upon an individual satisfying a standard that is related to a health factor.

The regulations offer the following as examples of health contingent wellness programs:

- A program that imposes a premium surcharge on tobacco use;
- A program that uses biometric screening or health appraisals to identify employees and/or dependents with special medical conditions (e.g., high cholesterol, blood pressure, diabetes, etc.) and:
 - Provides a reward to employees within a normal or healthy range in each specified category;
 - Requires employees who are identified as outside the normal or healthy range to take additional steps to obtain a reward (e.g., meet with a doctor or health counselor, enroll in a fitness or weight loss program and adhering to a health improvement action plan).

Must promote health and/or prevention

PPACA regulations require that a health contingent wellness program be designed to promote health and/or prevention of disease. A program will be deemed to satisfy this requirement if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals and is not overly burdensome, is not a subterfuge for discriminating against individual health plan participants based on a health risk factor and is not highly suspect in the method chosen to promote health or prevent disease.

What are the requirements for a health contingent wellness program under the PPACA?

29 CFR 2590.702 (f) (3) stipulates the following parameters for health contingent wellness programs:

- The program must give individuals an opportunity to qualify for rewards at least once per year.
- The reward for the health contingent wellness program with respect to the group health plan must not exceed the applicable percentage of the total cost of employee-only coverage under the plan.

However, if in addition to employees, any class of dependents and/or spouses may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of coverage in which an employee and any dependents and/or spouses are enrolled.

Total cost of coverage

The PPACA regulations provide that the cost of coverage is determined based on the total amount of employer and employee premium contributions for the group health plan under which the employee and, if applicable, any dependents and/or spouses are covered.

How Wellness Premium Incentives Affect Affordability

Wellness incentives can be provided in a number of ways. Some may be structured in the form of a premium discount; the most common approach being to lower an individual employee's premium contributions as a reward for participating in and/or meeting a health contingent parameter.

How do wellness premium incentives affect the health plan's affordability measurement? For example, if an employee pays \$200 per month for their insurance plan but would only pay \$100 as a reward for participating in a wellness program, which amount would count towards the employee's affordability measurement?

On May 3, 2013 the IRS released information regarding how wellness incentives, when applied to employee premiums, affect affordability measurements under section 36B of the Patient Protection and Affordable Care Act. This information is provided in 26 CFR Part 1 of the Federal Register, dated May 3, 2013. The new guidance articulated the following as applied to the above example:

Regardless of the employee's qualification for a reduced premium contribution as a result of participation in a wellness incentive program, the higher amount, without application of the wellness incentive, would be used as the determination of affordable health insurance premium; in this case, \$200 rather than the wellness-incentive reduced amount of \$100.

EXCEPTION: However, if the wellness incentive, or any portion thereof, were attributable to a tobacco cessation-related wellness incentive, the employee's incentive discounted premium would be used as the basis for the affordability measurement. In our above example, this would mean that if the employee received a wellness premium discount for tobacco cessation program participation, his lower premium (\$100) would be used as the basis for his affordability measurement.

Reward must be available on a uniform basis

29 CFR 2590.702 (f) (3) (ii) stipulates that a health contingent wellness program must require that the reward be available on a uniform basis as well as provide a "reasonable alternative standard" for reward qualification:

A reasonable alternative standard (or waiver of the applicable standard) for obtaining the reward for any individual for whom, for the period of the wellness program, it is unreasonably difficult or medically inadvisable due to a medical condition for the individual to satisfy the qualification standard must be provided.

If a wellness program's reward qualification standard (including qualification for a portion of the award) is based on the results of any measurement or test relating to a health risk factor, the plan must make available to any individual who does not meet the standard a different, reasonable means of qualifying for the reward.

Reasonable alternative standards

29 CFR 2590.702 (f) (3) (iii) (B) establishes the criteria to be used in evaluating whether there is a reasonable alternative standard:

- If the reasonable alternative standard is an educational program, the wellness plan or issuer must make the educational program available without cost to the individual
- If the reasonable alternative standard is a diet program, the wellness plan or issuer is required to pay for any membership or participation fee but is not required to pay for the cost of food.
- If the reasonable alternative standard is in compliance with a medical professional who is an agent of the wellness plan or issuer and the individual's personal physician states that the wellness plan's medical recommendations are not medically appropriate, the wellness plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician.
- If reasonable under the circumstances, the wellness plan or issuer may seek verification from the 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 applicable standard.

Notification requirements re: reasonable alternative standards

29 CFR 2590.702 (f) (v) requires employers to notify employees and applicable spouses and/or dependents regarding reasonable alternative standards. The wellness plan or issuer must disclose in all wellness plan materials describing the terms of the program the availability of other means for qualifying for the reward or the possibility of waiver of the otherwise applicable standard.

The PPACA regulations include the following sample notification language:

“Your health plan is committed to helping you achieve your best health status. 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 the wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at _____ and we will work with you to find a wellness program with the same reward that is right for you in light of your health status.”

For more information, please refer to PHS Act Section 2705 (j) (3) (A)