



NEW YEAR USHERS IN NEW RULES FOR WELLNESS PLANS

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Have you made your New Year's resolution this year? Statistically, most of us, and most of your employees, who have made New Year's resolutions are likely to have resolved to address a health-related aspect of our lives. ("This is the year I am going to quit smoking, drink less, lose weight, exercise more, take that physical I have been postponing for years...") Despite our good intentions, studies show that we continue to struggle with serious health risks, and that poor personal habits associated with many of those risks continue to be primary factors driving today's health care costs.

Many employers have responded with wellness plans as an integral feature of their health care plans to attempt to stem the tide of rising health care costs. These programs generally create monetary incentives for employees to comply with their New Year's resolutions and to participate in health screenings, smoking cessation programs, weight reduction programs, and other features of the plan. Until this year, there were many questions concerning the legalities of wellness plans, especially their incentive features. Proposed rules were published under the federal HIPAA regulations, but they languished for nearly a decade, during which time the use of wellness plans has skyrocketed. Given the obvious benefits of such plans and the need for legal clarity, the federal government finally published the long-awaited final rules at the end of last year. Highlights of the formalized rules include the following:

- Neither a group health plan nor a health insurer may establish eligibility criteria that discriminates against an individual based on that individual's health factor or the health factor of a dependent of that individual. However, a plan or insurer "may vary benefits, including cost-sharing mechanisms (such as a deductible, co-payment, or co-insurance), based on whether an individual has met the standards of a wellness program that meets the requirements of the rules.
- Neither a group health plan nor a health insurer may, because of an individual's health factor, require that individual to pay a higher premium or make greater contributions for coverage or services than the premiums or contributions made by similarly situated individuals, unless

the premiums are part of a compliant wellness program.

- If a wellness program does not offer a reward to the participants, or if none of the conditions for obtaining a reward under the wellness program are based on an individual's health factors, and if the program is made available to all similarly situated individuals, then that wellness program is not subject to the rules.

The following are examples of wellness programs immune from the wellness rules:

- A program that only reimburses the cost for membership in a fitness center.
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes of the testing.
- A program that encourages preventive care through the waiver of co-payments or deductible requirements under a group health plan for the costs of, for example, prenatal care or well-baby visits.
- A program that reimburses employees for the costs of smoking cessation programs without regard to whether the employee quits smoking.
- A program that provides a reward to employees for attending a monthly health education seminar.

If eligibility for obtaining a reward under the wellness program is based upon the health factors of an individual, then the wellness program must meet all of the following requirements:

- The cumulative rewards provided to a participating employee must not exceed 20% of the cost of employee-only coverage under the plan. If any class of dependents of the employee are allowed to participate in the wellness program, then the reward must not exceed 20% of the cost of coverage in which the employee and those dependents are enrolled. (The "cost" of the coverage is the amount of the employer and employee contributions combined.)
- The program must be reasonably designed to promote good health or prevent disease, as opposed to serving some other goal.

- The program must give individuals the opportunity to qualify for the reward at least once per year.
- The program must be made available to all similarly situated individuals.
- A reward will not be considered to be made available to all similarly situated individuals unless the program also provides for a reasonable alternative standard (or waiver of the standard) for those individuals who – due to a medical condition – experience unreasonable difficulty in attempting to satisfy the otherwise applicable standard or for whom it is medically inadvisable to attempt to satisfy the standard. An employer may require medical verification of a claim that a health factor makes it unreasonably difficult or medically inadvisable to satisfy the standard. The materials describing the wellness program must disclose the availability of a reasonable alternative standard.

These rules should now encourage more employers to evaluate wellness plans as part of their overall health plan. Much of the uncertainty of previous plans has been resolved with the new wellness plan rules, and statistics of existing wellness plans continue to demonstrate their value. For example, one study indicated that more than one-fourth of screening tests resulted in a referral to a primary care physician. Such early detection of undiagnosed conditions can result in huge savings in medical costs compared with treating the condition at a later, acute stage.

The adoption of a wellness plan will require coordination with your health plan administrator, regional health care providers, and your workforce. Employee education, in combination with an incentive plan that satisfies the new rules, will be the key to its success.

Good luck with your resolutions!