

# Benefit Brief



SUBJECT: Final Regulations Issued for Bona Fide Wellness Plans

DATE: November 1, 2007

This Benefit Brief summarizes the final HIPAA requirements for establishing a bona fide wellness plan. A wellness plan allows employers to provide incentives for healthy behavior, without violating HIPAA's non-discrimination rules.

## Background

The HIPAA non-discrimination rules are designed to prohibit a health plan from discriminating in terms of rules for eligibility, benefits or premiums, based on a health factor. This means that benefits, premiums, deductibles, coinsurance and co-pays (for example) cannot be higher for individuals who fail to meet a specified medical standard or cannot participate in a wellness program. Usually an employer will set up a reward-based system to encourage its employees to maintain healthy lifestyles. This reward will be given to those employees who are able to meet the standard or participate in the program, but will, in effect, cause a person with a health factor to pay more or to otherwise forego the reward that all other employees can get.

Health factors include medical conditions, claims experience, and receipt of healthcare. Nicotine addiction and Body Mass Index (BMI) are health factors that employers often incorporate into their wellness programs. A premium discount for individuals with a BMI under 26, for example, would be an example of a discriminatory plan design feature, unless the program complies with the HIPAA wellness program regulations.

Under these regulations, an employer is permitted to use incentives to encourage employees and their dependents to participate in health promotion and disease prevention programs and to attain specific outcomes. These provisions, in fact, define specific situations and guidelines for programs where it would be permissible to provide discounts, rebates or modifications to otherwise applicable copays, deductibles or contributions in return for adherence to a wellness program.

## Definition of a Bona Fide Wellness Program

A bona fide wellness program is intended to include a health-based activity or standard that genuinely strives to improve the health and wellness of employees (and/or any dependents who are eligible to participate). The HIPAA regulations for bona fide wellness plans define such a program as one that adheres to the following five requirements:

1. ***The total reward that may be given to an individual must not exceed 20% of the cost of employee-only coverage under the plan.*** If dependents are also eligible for the wellness program and are enrolled in the plan, the reward can be increased to 20% of the total cost of the coverage category in which the employee is enrolled. The reward can be a premium or deductible discount, the removal of a premium surcharge or an additional benefit (including the opportunity to enroll in a more generous benefit plan).

2. ***The program must be reasonably designed to promote good health or prevent disease.*** The program must have just a reasonable chance of improving health and must not be overly burdensome. This standard is supposed to be an easy standard to meet. Most wellness programs will easily comply.
3. ***Individuals must have the opportunity to qualify for any reward at least once per year.*** A program cannot base its rewards or penalties on health factors that are present when an individual first enrolls, without providing an opportunity, at least annually, for individuals to re-qualify.
4. ***The reward under the program must be available to all similarly-situated individuals.*** Wellness programs are required to make adjustments to address the health issues of any individuals for whom it is unreasonably difficult to qualify due to a medical condition (or for whom it is medically inadvisable to attempt). These adjustments can be accomplished by offering a reasonable alternative standard.

For example, consider a wellness program that offers a premium discount to individuals who maintain a cholesterol count below 200. For some individuals, this requirement could be unreasonably difficult or medically inadvisable. In order for this program to qualify as a bona fide wellness program, it must make available a reasonable alternative standard for those individuals, such as compliance with a low-cholesterol diet.

The reasonable alternative standard must take into account the specific health factor of the individual who requires it, but does not have to be determined before the program is implemented. At times, the reasonable alternative may require giving the reward to someone who cannot complete the standard. An employer may want to do this for employees who are not permitted to exercise due to a medical condition if the wellness program requires some amount of physical exertion.

5. ***All plan materials describing the terms of the plan must also disclose the availability of a reasonable alternative standard.*** Employers must try to ensure that individuals are aware of the availability of a reasonable alternative standard. However, they do not need to disclose specific details of the alternative standards. Furthermore, if the plan materials only mention the program and do not describe the general standard, they are not required to disclose the availability of an alternative standard.

### **Wellness Programs That do not Have to Meet These Guidelines**

The final regulations describe certain wellness programs that are not required to meet the above guidelines. These programs include ones that (1) are made available to all similarly situated individuals; and (2) under which no reward is offered or under which the reward does not depend on the individual's satisfaction of a standard related to a health status factor. The following are some examples of these types of programs:

- Fitness center membership fee reimbursements;
- Diagnostic testing programs that reward participation and not outcome of the tests;
- Programs that encourage preventive care by waiving co-pays or deductibles for pre-natal or well baby care;
- Smoking cessation program reimbursements (as long as quitting is not a requirement);
- Rewards for attending monthly health education seminars.

## **Conclusion**

An employer can establish a wellness program that requires participation in a specific activity or requires achievement of a specific goal. This program, however, must meet the five standards described in this Benefit Brief. The wellness program can offer employees rewards for participation or for meeting the standard. These rewards can include reduced co-pays, coinsurance or premium contributions. They can also include other incentives that will help increase participation. The result of implementing a wellness program will be to encourage employees to maintain a healthy lifestyle, to engage in health activities, and to work toward achieving better health.

If you have any questions about developing a wellness program or if you need a review of an existing program, please contact Danielle Omans at The Benecon Group at [domans@benecon.com](mailto:domans@benecon.com), or the number shown below.

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