

Health Reform

Guidance Issued on Wellness Programs

Marty Haitz | Marcum Financial Services | (484) 270-2575 | martin.haitz@marcumfs.com



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The Departments of Labor, Treasury and Health and Human Services issued a proposed rule regarding incentives for nondiscriminatory wellness programs. This new guidance builds on the existing wellness program rules that apply under current regulations and addresses changes under the Affordable Care Act effective for plan years beginning on or after January 1, 2014. The proposed rule applies to both grandfathered and non-grandfathered plans.

Background

Before health care reform, HIPAA provided that group health plans and insurers were prohibited from discriminating against individual participants and beneficiaries in eligibility, benefits, or premiums based on a health factor. An exception to the general rule allows premium discounts or rebates or modification to otherwise applicable cost sharing in return for adherence to certain programs of health promotion and disease prevention. This exception has been implemented by allowing benefits (including cost sharing), premiums, or contributions to vary based on participation in a wellness program, if such program adheres to certain conditions set forth in existing regulations. Those regulations categorize wellness programs into two categories: participation only programs and standards-based or rewards-based programs. In order to vary benefits, premiums or contributions for a standards-based or rewards-based program, certain conditions must be met.

Changes by the ACA

Reclassification of Programs

Consistent with prior regulations, the proposed rule continues to divide wellness programs into two categories; however, the types are reclassified as “participatory wellness programs” and “health-contingent wellness programs.” Participatory wellness programs are those that are made available to all similarly situated individuals and that 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 that is related to a health factor. The proposed rule provides examples of participatory wellness programs, including programs that reimburse for all or part of the cost of membership in a fitness center, and programs that provide a reward to employees for attending a monthly, no-cost health education seminar. These types of programs are not required to meet the five requirements applicable to health-contingent wellness programs.

Health-contingent wellness programs require an individual to satisfy a standard related to a health factor to obtain a reward, or require an individual to do more than a similarly situated individual based on a health factor in order to obtain the same reward. Similar to the prior regulations, the proposed rule continues to allow rewards to be in the form of a discount or rebate of a premium or contribution, a waiver of all or part

of a cost-sharing mechanism, the absence of a surcharge, the value of a benefit that otherwise would not be provided under the plan, or other financial or nonfinancial incentives or disincentives. Again, the proposed rule provides examples of health-contingent programs, including programs that impose a premium surcharge based on tobacco use, and programs that use biometric screening or a health risk assessment to identify employees with specified medical conditions or risk factors (such as a high cholesterol, high blood pressure, etc.) and provides a reward to employees identified as within a normal or healthy range, while requiring employees identified as outside the normal or healthy range to take additional steps (such as meeting with a health coach, or taking a health or fitness course, etc.) to obtain the same reward. The proposed rule reiterates that the five requirements stated above apply only to health-contingent wellness programs. These five requirements are essentially the same except for one significant modification relating to the size of the reward.

Health-Contingent Wellness Programs

The proposed rule generally maintains the five requirements from the prior regulations for health-contingent wellness programs with one significant modification relating to the size of the reward. The proposed rule also re-orders some of the provisions and provides further clarification on several of the provisions.

Opportunity to Qualify

Consistent with the prior regulations, health-contingent wellness programs must give individuals eligible for the program the opportunity to qualify for the reward at least once per year.

Size of Reward

The proposed rule continues to limit the total amount of the reward for health-contingent wellness programs with respect to a plan, but increases the reward threshold to a maximum of 30% for health-contingent wellness programs. In a notable exception, the rule allows rewards-based wellness programs designed to prevent or reduce tobacco use to offer a reward of up to a maximum of 50% of the total cost of coverage.



Uniform Availability and Reasonable Alternative Standards

The proposed rule reiterates the requirement set forth in the prior regulations that the reward must be available to all similarly situated individuals. To meet this requirement, a “reasonable alternative standard” (or a waiver of the otherwise applicable standard) for obtaining the reward must be provided for 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. The rule provides some helpful clarification regarding reasonable alternatives:

- A plan may always waive the otherwise applicable standard and provide the reward (for an entire class of individuals or on an individual-by-individual basis based on the facts and circumstances presented).
- Plans are not required to determine a particular alternative standard in advance of an individual’s request for one, but an individual who is eligible for a reasonable alternative standard must be furnished this alternative upon his or her request or the condition for obtaining the reward must be waived.
- All facts and circumstances must be taken into account in determining whether the plan furnished a reasonable alternative standard, including (but not limited to):
 - If the reasonable alternative standard is the completion of an educational program, the plan 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.
 - If the reasonable alternative standard is a diet program, plans are not required to pay for the cost of food but must pay any membership or participation fee.
 - If the reasonable alternative standard is compliance with the recommendations of a medical professional who is an employee or agent of the plan, and an individual’s personal physician states that the plan’s recommendations are not medically appropriate for

that individual, the plan must provide a reasonable alternative standard that accommodates the recommendations of the individual’s personal physician with regard to medical appropriateness. Plans may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician’s recommendations.

- If reasonable under the circumstances, a plan may 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. It would not be reasonable, for example, for a plan to seek verification of a claim that is obviously valid based on the nature of the individual’s medical condition that is known to the plan. However, plans may seek verification in the case of claims for which it is reasonable to determine that medical judgment is required to evaluate the validity of the claim.

Reasonable Design

The proposed rule continues to require that health-contingent wellness programs be reasonably designed to promote health or prevent disease, not be overly burdensome, not be a subterfuge for discrimination based on a health factor, and not be highly suspect in the method chosen to promote health or prevent disease. The proposed rule provides some additional guidance in this area. To the extent a plan’s initial standard for obtaining a reward (including a portion of a reward) is based on the results of a measurement, test, or screening relating to a health factor (such as a biometric examination or a health risk assessment), the plan must make available to any individual who does not meet the standard based on the measurement, test, or screening a different, reasonable means of qualifying for the reward. For example, plans could target individuals with high cholesterol for participation in cholesterol reduction programs, or individuals who use tobacco for participation in tobacco cessation programs, rather than the entire population of participants and beneficiaries if individuals who do not meet a plan’s target biometrics (or similar standards) are provided a different, reasonable means of qualifying for the same reward.

Notice of Other Means of Qualifying for the Reward

Under the existing rules, plans must disclose in all plan materials describing the terms of the program the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. If materials merely mention the availability of a program, without describing its terms, this disclosure is not required. Due to confusion around the existing notice, the proposed rule provides language that can be used (or allows the use of substantially similar language) to satisfy the notice requirement as follows:

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 this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] 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.

The preamble to the proposed rule indicates that this disclosure is not a required component of a Summary of Benefits and Coverage (SBC).

Conclusion

This guidance is in proposed format and applies effective for the first plan year that begins on or after January 1, 2014. The agencies are requesting comments from the public on various issues outlined in the guidance. Final guidance is expected in 2013, prior to the effective date of these increased incentives.

