

HIPAA Considerations

Wellness programs that offer a reward in connection with the group health plan are typically subject to HIPAA. This includes programs that offer participant contribution discounts for non-tobacco users as well as programs that offer reduced copays, deductibles, and employer contributions toward a health reimbursement account for program participation.

Under HIPAA, group health plans cannot use health factors to discriminate against similarly situated individuals with regard to eligibility, premiums, or contributions. Health factors include health status, medical conditions, claims experience, medical history, genetic information, disability, and more. More specifically, health factors can include health statuses such as blood pressure, body mass index, or tobacco use. HIPAA nondiscrimination rules provide an exception allowing group health plans to set different premiums, contributions, and cost-sharing amounts for individuals who participate in a wellness program.

HIPAA divides wellness programs into two categories: participatory or health contingent. To comply with HIPAA nondiscrimination rules, a participatory program has to be available to all similarly situated employees and either offers no reward or a reward that is not conditioned on satisfying a health standard. Health contingent programs are further divided into two categories: activity-only and outcome-based. An activity-only program is a program that requires the individual to perform or complete an activity related to a health factor in order to obtain the wellness reward. However, the person simply needs to complete the activity, and not achieve specific results, to receive the reward. An outcome-based program requires the individual to achieve or maintain a specified health outcome, such as reaching or maintaining a healthy weight or blood cholesterol level, or not using tobacco. A health-contingent wellness program subject to HIPAA must meet 5 requirements:

- 1. Be reasonably designed to promote health or prevent disease (the same rules apply to activity-only and outcome-based programs).**
- 2. Give employees a chance to qualify for the incentive at least once a year (the same rules apply to activity-only and outcome-based programs).**
- 3. Cap the reward or penalty at 50 percent of the total cost of coverage for avoiding tobacco and at 30 percent for all other types of wellness incentives (the same rules apply to activity-only and outcome-based programs).**
- 4. Provide an alternative way (reasonable alternative) to qualify for the incentive for those who have medical conditions (different rules apply to activity-only and outcome-based programs).**
- 5. Describe the availability of the alternative method of qualifying for the incentive in written program materials (the same rules apply to activity-only and outcome-based programs).**