

FYI[®] In-Depth

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Final wellness regulations mean health plans need a checkup

The Departments of Labor, Treasury, and Health & Human Services (the Departments) issued final regulations, which, among other things, reflect changes made by the Affordable Care Act to wellness programs subject to the HIPAA nondiscrimination rules. While the regulations retain the same general principles and framework as prior guidance, the Departments amended some of the concepts first introduced in the proposed regulations issued late last year. Specifically, the Departments subtly reworked the definition and analysis for participatory and health-contingent programs. These changes could have a significant impact on some wellness programs. As a result, all group health plans offering wellness programs will need to consider those programs in light of these final regulations and make any necessary design changes. The regulations are effective for plan years beginning on or after January 1, 2014.

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Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), which amended the Internal Revenue Code (Code), ERISA, and the Public Health Service Act (PHSA), generally prohibits group health plans and insurers from discriminating against individual participants and beneficiaries with respect to eligibility, benefits, or premiums based on a health factor. However, HIPAA does not prevent a group health plan from establishing rewards (e.g., premium discounts, rebates, or modifying copayments or deductibles) under a wellness program that promotes health and prevents disease.

Final regulations issued in 2006 addressed wellness programs, permitting group health plans to provide a reward (or penalty) for participants who satisfy (or fail to satisfy) a health standard, as long as the program satisfies certain conditions. The regulations established five requirements to which standard-based (currently known as “health-contingent”) wellness programs must adhere. (See sidebar on page 2.)

In 2010, the Affordable Care Act (ACA) modified the HIPAA nondiscrimination and wellness program provisions, essentially codifying the 2006 regulations (i.e., the five requirements are now statutory) and increasing the

maximum reward available to participants in wellness programs to 30% of the total cost of coverage. In addition, the ACA authorized the Departments to increase the reward to up to 50% of the cost of coverage.

In November 2012, the Departments issued proposed regulations, adjusting the 2006 wellness regulations to accommodate the ACA changes and modifying them. Retaining core principles from the 2006 regulations, the proposed regulations increase the maximum reward available to participants in wellness programs to 30% of the cost of coverage and allow a 50% limit for certain tobacco-related programs. The proposed regulations also

Requirements for health-contingent wellness programs

- Limit the total amount of all incentives/surcharges to 20% of the total cost of unsubsidized employee-only coverage (or, for plans that allow any class of dependents to participate in the wellness program, 20% of the unsubsidized cost of the coverage for employees and dependents)
- Design the program to promote health or prevent disease
- Allow at least annual participation
- Make the program available to all similarly situated participants
- Offer and disclose the availability of alternatives for the reward where it is unreasonably difficult or medically inadvisable for a participant to meet the requirements

introduce some new concepts. For example, the regulations significantly change the “reasonable alternative standard” for health-contingent wellness programs. (See our [December 13, 2012 For Your Information](#).)

In early May, the Departments issued proposed regulations generally addressing affordability and the minimum value of eligible employer-sponsored plans for purposes of the shared responsibility penalty. (See our [May 24, 2013 For Your Information](#).) Among other things, those proposed regulations address the impact of wellness programs on minimum value and affordability. Those regulations have not yet been finalized and should not be confused with these [final wellness regulations](#).

Note many other laws regulate plans and issuers in their provision of benefits to participants and beneficiaries. Compliance with these wellness final regulations is not determinative of compliance with other applicable requirements such as the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Genetic Information Nondiscrimination Act, the Code, privacy and state law. To confirm compliance in all areas of the law, it's important to consult legal counsel for a full analysis of any wellness program.

HIPAA wellness programs

Wellness programs come in all shapes and sizes and have had a variety of names over the years. Some programs reward certain behaviors, biometrics, and/or participation in certain activities. Wellness programs have been referred to as health and productivity, wellness, disease management programs, etc. These programs attempt to address body, mind, and pocketbook — helping employers reduce benefit costs and lost work time, while increasing employee productivity and satisfaction. For example, a wellness program might create incentives to encourage employees to adhere to a particular course of treatment or to otherwise better manage their health. A

program that relates to an employer group health plan must comply with HIPAA protections. The final regulations divide wellness programs into two categories — participatory and health-contingent. Programs that reward individuals who participate in certain activities or who meet certain standards based on results of tests, measurements, or screenings are subject to a heightened scrutiny under the regulations.

Participatory wellness programs

A program is participatory if none of the conditions for obtaining a reward are based on an individual satisfying a standard that is related to a health factor. A participatory wellness program must be available to all similarly situated individuals. Such programs are not considered discriminatory and need not meet the five wellness requirements set out in the regulations.

Examples of participatory programs include those that:



- Reimburse some or all of the cost of fitness center memberships (e.g., free or discounted health club membership)
- Reward individuals who receive diagnostic testing — not based on outcomes (e.g., biometric screening)
- Waive copays or deductibles under a group health plan for receiving preventive care (such as prenatal care or well-baby visits). Note that the ACA requires non-grandfathered plans to cover certain preventive health care at 100%. Thus, this would only be relevant for grandfathered plans
- Reward participation in a smoking cessation program, regardless of whether the individual quits smoking (e.g., listed among health education seminars offered under the wellness program)
- Reward attendance at free health education seminars (e.g., course on nutrition)
- Reward the completion of a health risk assessment (HRA) — not based on outcomes (e.g., no follow-up action on any identified health issues required)

Buck Comment. While the language is consistent with the 2006 regulations, the notion of participatory programs expressed in the final (and proposed) regulations differs from that commonly known in the wellness community as a “participatory program.” Commonly understood, a participatory program was a program available to all similarly situated employees, regardless of a health condition. For example, a “Get Healthy” walking program, not targeted at those with a specific health issue, but available to the entire employee population, had been considered participatory. Under the final regulations, however, such a program would not be participatory, but rather an activity-only program in the health-contingent category and subject to the wellness requirements. Under the final regulations, participatory programs appear to be more passive and generally don’t include an activity.

Health-contingent wellness programs

A health-contingent program requires an individual to satisfy a standard related to a health factor in order to obtain a reward. Such programs fall into two categories — activity-only and outcome-based. Both programs are required

to comply with the newly restructured five requirements for wellness plans, but the requirements differ slightly depending on whether the program is activity-only or outcome-based.

Activity-only programs

Activity-only programs require an individual to perform or complete an activity related to a health factor in order to obtain a reward. For example, these include walking, diet, and exercise programs. Activity-only programs are subject to the five requirements for wellness plans.

Buck Comment. Why are activity-based programs, like exercise or walking programs, available to all employees regardless of health, now considered health-contingent? Concerned that a wellness reward could be unavailable to some individuals because of a health factor (e.g., recent surgery prevents the person from exercising), the Departments provided safeguards in the regulations to ensure that these individuals would be given a reasonable alternative standard to qualify for the reward.

Tighter controls on health-contingent wellness programs

The final regulations continue the theme expressed in the proposed regulations that wellness plans be reasonably designed to promote health and prevent disease and not subterfuge for discriminating against individuals based on a health factor. To that end, the regulations place tighter controls on programs that reward a specific health metric or standard.

Requirements for activity-only wellness programs

1. **Opportunity to qualify for reward.** Individuals must be given the opportunity to qualify for the reward at least once a year.
2. **Size of reward.** As described under the proposed regulations, the maximum reward for participation in a *non-tobacco* wellness program is 30% of the total cost of coverage. An additional 20% can be applied to wellness programs designed to prevent or reduce tobacco use (up to 50% total, including tobacco programs). The total cost of coverage is the sum of employer and employee contributions, generally the COBRA rate minus the 2% administrative fee. If any employee dependents are also eligible to participate in the wellness program, the reward limit cannot exceed the applicable percentage of the coverage category (e.g., employee plus one, family) in which the employee and any dependents are enrolled. In the case where family members are eligible for a reward and not all members participate or qualify for the reward, the regulations allow plans to apportion the reward among family members, as long as the method is reasonable. The Departments note that additional subregulatory guidance could be issued if questions arise.

A reward includes not only financial incentives — such as lower contributions, reductions in cost-sharing, but also includes the avoidance of a penalty — such as the absence of a premium surcharge or other financial or nonfinancial disincentives.

Buck Comment. Rewards offered in conjunction with participatory wellness programs do not count toward the limit for health-contingent programs. Any rewards provided for participatory programs,

such as attending health education seminars or taking a health risk assessment or biometric screening (not health outcome related), would not be included in the applicable percentage for health-contingent programs.

3. **Reasonable design.** Programs must be reasonably designed to promote health or prevent disease. Based on the facts and circumstances, a program will satisfy this standard if it:

- Has a reasonable chance of improving the health of participating individuals
- Has a reasonable chance of preventing disease in participating individuals
- Is not overly burdensome
- Is not subterfuge for discriminating based on a health factor
- Is not highly suspect in the method chosen to promote health and prevent disease

The preamble of the regulations provides a safe harbor of sorts for identifying if a program is reasonably designed. The Departments state that “[w]hile programs are not required to be accredited or based on particular evidence-based clinical standards, these practices, such as those found in the CDC’s [Guide to Community Preventive Services](#), may increase the likelihood of wellness program success and are encouraged as a best practice.”

4. **Uniform availability and reasonable alternative standards.** The full reward must be available to all similarly situated individuals. For an activity-only program, a reward will be deemed available to all similarly situated individuals for a period if it allows a reasonable alternative standard (or waiver) for obtaining the reward for any individual for whom, for that period, it is:

- Unreasonably difficult due to a medical condition to satisfy the standard; and
- Medically inadvisable to attempt to satisfy the standard

The plan or issuer must furnish a reasonable alternative standard to these individuals, if requested, or the condition for obtaining the reward must be waived.

What’s reasonable? Whether an alternative standard is reasonable depends on all the facts and circumstances, including but not limited to the following:

- If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program (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.
- The time commitment required must be reasonable (e.g., requiring nightly attendance at a one-hour class would be unreasonable).
- If the reasonable alternative standard is a diet program, the plan or issuer must pay any membership or participation fee associated with the program (but not the cost of food).
- If an individual’s personal physician states that a plan standard (including, if applicable, the recommendations of the plan’s medical professional) is not medically appropriate for the individual, the plan or issuer must provide a reasonable alternative standard that accommodates the

recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

Example. In the summer months, Romeo's Rugs Inc. implements a "Get Moving" walking program, which is available to all employees. The employer communicates to employees that if it is unreasonably difficult due to a medical condition for an individual to participate (and it is medically inadvisable for an individual to attempt to participate), the plan will waive the walking program requirement and provide the reward. All materials describing the terms of the walking program disclose the availability of the waiver.



Juliet is pregnant during the period that the program is offered. Her doctor verifies that it is unreasonably difficult and medically inadvisable for her to attempt to participate in the walking program. The standard is waived for her and she receives the reward. Romeo's Rugs' wellness program is a health-contingent, activity-based program that satisfies the HIPAA requirements.

Buck Comment. For activity-only programs, plans and issuers can seek physician verification when it is reasonable to believe that requests for an alternative standard require a medical judgment to evaluate the validity of the request. With regard to whether the verification must be made by a physician or other medical professional, for now, the regulations permit the plan, in light of all the facts and circumstances and subject to the broader standards for reasonable design, to determine whether a physician or other medical professional should provide the opinion. Further guidance could be issued on this subject.

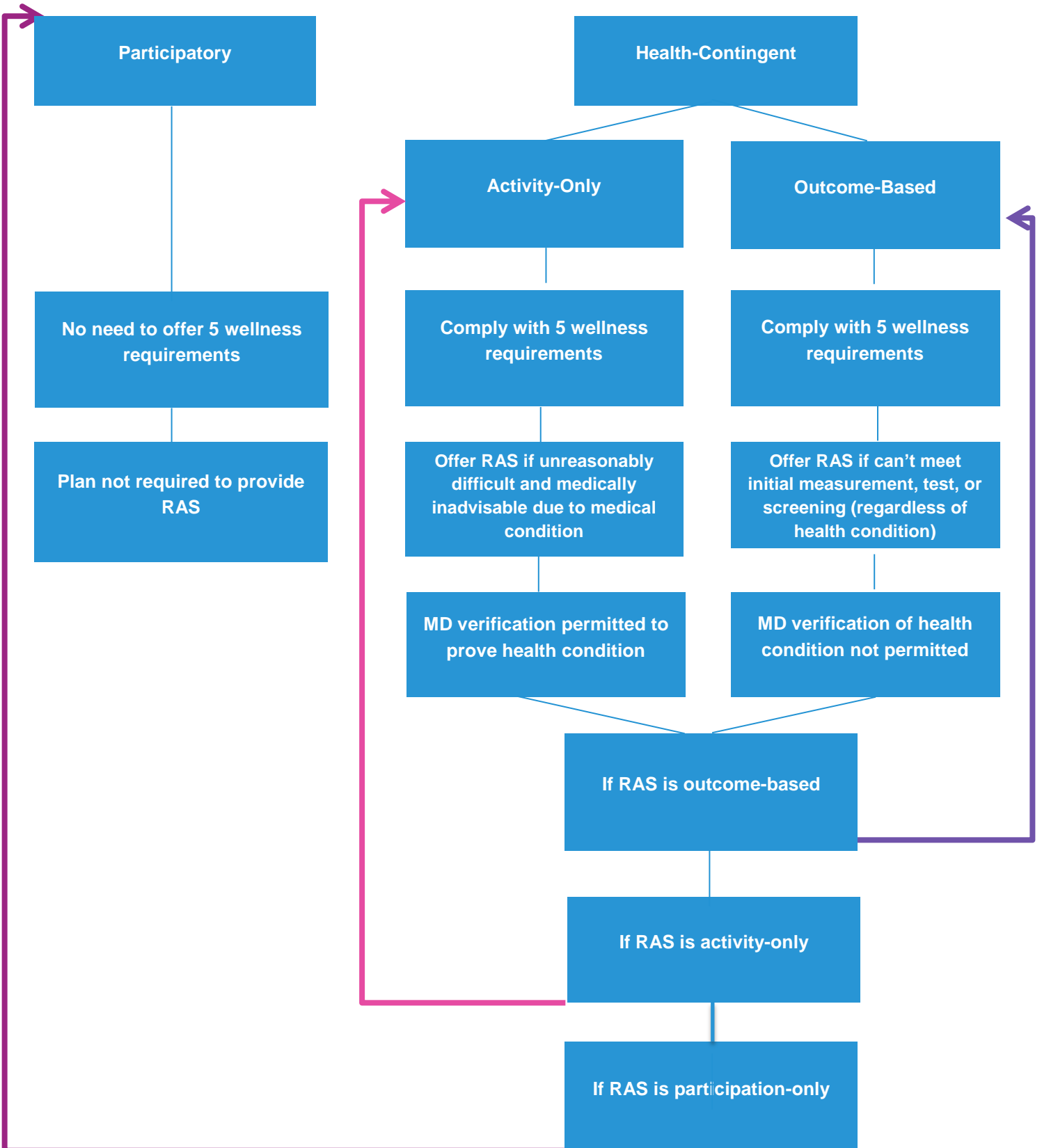
Identifying an alternative standard. Plans have the flexibility to determine whether to provide the same alternative to those who request it or on an individual-by-individual basis. Plans do not have to determine the alternative in advance.

Right to earn full reward. Individuals who are given an alternative standard to an activity-only wellness program must be able to earn the same reward as those who meet the initial activity, even if it takes some time to satisfy the standard. The plan has the flexibility to determine how to provide the reward, such as retroactive or pro rata payments for the remainder of the year, as long as the method is reasonable and the individual is made whole (e.g., receives the full amount of the reward). In the case where an individual does not satisfy the alternative until the end of the year (e.g., complete a smoking cessation class), the plan can provide retroactive payment for the reward within a reasonable time after the end of the year. But, pro rata payments may not be made over the following year (the year after the year in which the reward was earned). A plan can always waive the otherwise applicable standard (and provide the reward) for an individual who cannot meet it.

Buck Comment. The Departments do not describe how the retroactive payments would be made and what the impact might be on cafeteria plan (also called pretax or salary reduction plan) elections. Additionally, as noted above, individuals cannot satisfy a reasonable alternative standard

in one year and be rewarded in the subsequent year. Those plans will need to be changed to be ready for 2014. Under the cafeteria plan change in election rules, a mid-year contribution to a health FSA, an HRA, or an HSA by an employer is permissible, but will not trigger an opportunity for employees to change existing health FSA or major medical elections under a cafeteria plan. An employee may prospectively change a major medical election only in limited circumstances, one of them appropriate for this situation being a change in cost or coverage terms of the medical coverage (such as a premium reduction, deductible decrease, or increase of major medical coverage). Plans should seek legal advice for how best to comply with the cafeteria plan and the wellness regulations when a standard is satisfied late in the year.

The flowchart on the following page provides a useful overview of the analysis involved with offering a reasonable alternative standard (RAS):



5. **Notice of reasonable alternative standard.** A plan must disclose in all plan materials describing the program the availability of the reasonable alternative standard to qualify for the reward (and if applicable, the possibility of a waiver). The regulations also require that this disclosure include contact information and a statement that an individual's personal physician will be accommodated.

The regulations update and provide sample notice/disclosure language as follows:

Your health plan is committed to helping you achieve your best health. 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 (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.

Additionally, an example in the regulations addressing an activity-only program uses this notice language:

Fitness Is Easy! Start Walking! Your health plan cares about your health. If you are considered overweight because you have a BMI of over 26, our Start Walking program will help you lose weight and feel better. We will help you enroll. (If your doctor says that walking isn't right for you, that's okay, too. We will work with you [and, if you wish, your own doctor] to develop a wellness program that is.)

Outcome-based programs

Unlike activity-only programs, outcome-based programs require an individual to attain or maintain a specific health outcome in order to receive a reward. Programs that reward nonsmokers; those who attain certain results on biometric screenings (e.g., BMI of 30 or under); or those who test within a healthy range for biometric screening tests of certain risk factors (e.g., high cholesterol or glucose level) and require those who test outside the range or who are at risk to take additional steps (like meeting with a health coach) to obtain the reward are outcome-based programs. Much like the activity-only program requirements, outcome-based programs must satisfy five conditions to be compliant with HIPAA, however, some differences exist.

Requirements for outcome-based wellness programs

1. **Opportunity to qualify for the reward.** As required for activity-only programs, individuals must be given the opportunity to qualify for the reward at least once a year.
2. **Size of reward.** As with activity-only programs, the maximum reward for participation in a non-tobacco wellness program is 30% of the total cost of coverage. An additional 20% can be applied to wellness programs designed to prevent or reduce tobacco use (up to 50% total, including tobacco programs). See information above for more details on the size of the reward.

Example. Macbeth's Musical Instruments' wellness program consists exclusively of a tobacco prevention offering. The total annual cost of employee-only coverage under Macbeth's group health plan is \$6,000.

Employees who have used tobacco in the last 12 months and who are not enrolled in the tobacco cessation program are charged a \$1,000 premium surcharge in addition to their employee contribution of \$6,000. Employees who participate in the plan's tobacco cessation program are not assessed the \$1,000 surcharge. The program satisfies the maximum reward limitation because the reward for the wellness program (absence of a \$1,000 surcharge) does not exceed 50% of the total annual cost of employee-only coverage, \$3,000 ($\$6,000 \times 50\% = \$3,000$).

Example. Same facts as above, but the wellness program contains other health-contingent components in addition to a tobacco prevention offering. In addition to a \$2,000 group health plan premium surcharge imposed on employees who do not participate in the smoking cessation program, employees can earn a \$600 premium reduction if they meet certain health-related numerical scores related to blood sugar, weight, cholesterol, and blood pressure. The program satisfies the maximum reward limitation because (1) the total of all rewards (including absence of a surcharge for participating in the tobacco program) is \$2,600 ($\$600 + \$2,000 = \$2,600$), which does not exceed 50% of the total annual cost of employee-only coverage (\$3,000); and (2) tested separately, the \$600 reward for the wellness program unrelated to tobacco use does not exceed 30% of the total annual cost of employee-only coverage, \$1,800 ($\$6,000 \times 30\% = \$1,800$).

3. **Reasonable design.** Duplicating the rule [from the activity-based program](#) requirements, wellness plans must be reasonably designed to promote health or prevent disease. Based on the facts and circumstances, a program will satisfy this standard if it:
 - Has a reasonable chance of improving the health of participating individuals
 - Has a reasonable chance of preventing disease in participating individuals
 - Is not overly burdensome
 - Is not subterfuge for discriminating based on a health factor
 - Is not highly suspect in the method chosen to promote health and prevent disease
4. **Uniform availability and reasonable alternative standards.** The full reward under an outcome-based program must be available to all similarly situated individuals. A reward will be deemed available to all similarly situated individuals for a period if the program allows a reasonable alternative standard (or waiver) for obtaining the reward for any individuals who do not meet the initial standard based on the measurement, test, or screening. As opposed to an activity-only program where an alternative standard must be generally offered when it is medically inadvisable for the individual to meet the initial standard (and, if reasonable, the plan can request physician verification), for an outcome-based program, the plan must offer a reasonable alternative standard to *any* individual who does not meet the initial (healthy) standard, regardless of the individual's medical condition or other health status. To ensure that an initial standard is not subterfuge for discrimination or underwriting based on a health factor, the plan must offer a reasonable alternative standard to receive the reward to any individuals who do not meet the target biometric (e.g., nonsmoking status, cholesterol level, BMI, blood pressure). Under an outcome-based program, doctor verification of the health condition is not permitted.

Example. Richard's Roses Inc. offers a wellness program reward for employees who have a healthy cholesterol level below 200 mg/dl. The group health plan provides the screening free of

charge. Employee Henry Bolingbroke's test results indicate a level of 237 mg/dl. Regardless of any medical condition or other health status that might cause the cholesterol level to be high, Henry has not met the initial standard (e.g., target biometric) and he must be given a reasonable alternative standard to obtain the wellness program reward.

What's reasonable? Whether an alternative standard is reasonable depends on the facts and circumstances. The Departments use the same facts and circumstances to define a reasonable program that are used for activity-only programs. (See details [above](#).)

Standards to meet if the alternative is activity-only. To the extent that a reasonable alternative standard under an outcome-based program is itself an activity-only program, it must comply with the activity-only requirements as if it were the initial program standard. If the reasonable alternative is an activity-only program, then the plan may need to offer a second alternative to any individual who can't satisfy the standard for a medical reason.

Standards to meet if the alternative is outcome-based. If the reasonable alternative is an outcome-based program, the plan may need to provide a second alternative to anyone who fails the standard. A special rule related to outcome-based programs requires that when the reasonable alternative standard is outcome-based, the individual must be allowed to request to follow his or her doctor's recommendations to earn the reward.

Identifying an alternative standard. As for activity-only programs, plans have the flexibility to determine whether to provide the same alternative to those who request it or to provide an alternative on an individual-by-individual basis. Plans do not have to determine the alternative in advance. (See details [above](#).)

Refer to the flowchart [above](#) for an overview of the reasonable alternative standard analysis.

5. **Notice of reasonable alternative standard.** Like activity-only programs, a plan must disclose in all plan materials describing the program the availability of the reasonable alternative standard to qualify for the reward (and if applicable, the possibility of a waiver). The regulations also require that this disclosure include contact information and a statement that an individual's personal physician will be accommodated.

The regulations update and provide sample notice/disclosure language. The regulations state that the requirements for an outcome-based program will be satisfied if this language or substantially similar language is used:

Your health plan is committed to helping you achieve your best health. 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 (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.

Additionally, an example in the regulations addressing an activity-only program uses this notice language:

Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your total cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you and your doctor to find a Health Smart program that is right for you.

Wellness plan checkup — it's going to be a busy summer

Under the ACA, programs that are noncompliant could be subject to penalties under the Code and the PHSA of up to \$100 per day. Wellness programs are also subject to audit from the DOL and could be subject to enforcement under ERISA. The Departments state that these wellness regulations provide “criteria for an affirmative defense that can be used by plans and issuers in response to a claim that the plan or issuer discriminated under the HIPAA nondiscrimination provisions.” A careful review of any program of health promotion and disease prevention is required before 2014. Each component of a wellness program should be carefully analyzed to determine whether the piece is participatory (not subject to a maximum reward) or health-contingent (subject to the 30% — 50% for tobacco use programs — maximum reward).

Looking at the big picture

Keep in mind that the Departments continue to send the same message: wellness program rewards should be available to all — not just those who are healthy.

So, this summer is the ideal time for all wellness programs to have a checkup to ensure compliance. In examining wellness arrangements for 2014, consider the following:

Is the program participatory?

- Participatory program
 - Reward can be financial or nonfinancial (e.g., education, fitness, no reward at all)
 - Health education seminars
 - Discounted health club membership (taxable benefit)
 - Smoking cessation program
 - Health risk assessments
 - Biometric screenings
 - Program is participatory if the reward is not conditioned on an individual satisfying a standard that is related to a health factor
 - Program must be available to all similarly situated individuals, regardless of health status
 - Need not meet the five requirements for health-contingent programs

Is the program health-contingent?

- Health contingent program
 - To receive the reward, the program requires an individual to satisfy a standard related to a health factor
 - Program is either an activity-only or outcome-based

- Must meet the five requirements
- Activity-only program
 - To receive the reward, the individual has to perform or complete an activity related to a health factor (e.g., health factor of the individual)
 - Walking program
 - Diet program
 - Exercise program
 - Program does not require a measurement, test, or screening
 - Program must meet the five requirements for activity-only arrangements
 - Individuals must be allowed to qualify for the reward at least once a year
 - Amount of the reward must be limited to the requirements for tobacco use and non-tobacco use programs
 - Program must be reasonably designed to promote health or prevent disease — design would not be considered subterfuge for discrimination
 - Program is uniformly obtainable and reasonable alternative standards are available
 - Is it reasonably foreseeable that an individual won't qualify for the reward because of a health standard?
 - If it's unreasonably difficult for an individual to meet the standard due to a medical condition and medically inadvisable to attempt to satisfy the standard, program must offer a reasonable alternative or waive the standard if requested
 - Physician verification is permitted where a medical judgment is necessary to evaluate the validity of the request
 - Alternative standard offered must be reasonable, manageable, practical
 - Activity-based alternative standards must meet the activity-based requirements; outcome-based alternative standards must meet outcome-based requirements
 - Individual using alternative standard must be made whole and receives the full amount of the reward if alternative is satisfied
 - Documentation must meet disclosure requirements
- Outcome-based program
 - To receive the reward, the individual must meet a specific health outcome or attain a specific health metric
 - Reward for nonsmokers
 - Reward for meeting certain biometrics or health standard (e.g., BMI, cholesterol)
 - Program must meet the five requirements for outcome-based arrangements
 - Individuals must be allowed to qualify for the reward at least once a year
 - Amount of the reward is limited to the requirements for tobacco use and non-tobacco use programs

- Program is reasonably designed to promote health or prevent disease — design would not be considered subterfuge for discrimination
- Reasonable alternative standard offered to those who do not meet the initial standard (based on the measurement, test, or screening)
 - Program offers reasonable alternative standard to anyone who doesn't meet the initial standard, regardless of medical condition or health status
 - Physician verification of the validity of the request for an alternative is not permitted
 - Alternative standard offered is reasonable, manageable, practical
 - Activity-based alternative standards must meet the activity based requirements; outcome-based alternative standards must meet outcome-based requirements
 - Individual using alternative standard must be made whole and receives the full amount of the reward if alternative is satisfied
- Documentation meets disclosure requirements

Some other considerations:

- Compliance with the tax code
 - Taxability of reward
 - Cash or reward with a face value is always taxable
 - Premium or cost sharing reductions are nontaxable
 - Compliance with specific Code requirements
 - Contribution to an HSA or health FSA
 - Employee elections under a cafeteria plan
- Compliance with ADA
 - Would the program be considered voluntary?
 - Does the program accommodate those who — because of a disability — can't meet a requirement?
- Compliance with other anti-discrimination laws, such as Title VII, the Pregnancy Discrimination Act and the Age Discrimination and Employment Act
 - Does the program affect a benefit offered in an employment situation? Does it stem from an employer-provided benefit?
 - Under the plan design, would an individual in a protected class receive less of a benefit than individuals not in the protected class? Regardless of the official name, the program may not impose any sort of "take-away" penalty if such an individual does not take certain steps, such as respond to an incentive
 - Does the program single out pregnant women for a lesser benefit unless they take certain actions?
 - Does a program incentive relate to the age of the individual?

To confirm compliance in all areas of the law, it's important to consult legal counsel for a full analysis of any wellness program.

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