

MORE GUIDANCE, MORE FLEXIBILITY ON WELLNESS PROGRAMS

The Department of Labor (DOL) has issued a checklist of criteria that wellness programs must meet in order to comply with HIPAA nondiscrimination regulations. While the checklist mostly confirms previous guidance, it does include two items that give plans more leeway in designing wellness incentives. In one, the DOL explains how health-related incentives can be combined with non-health-related incentives to encourage program participation. In the other, the DOL confirms that discrimination in wellness programs is in fact permissible - when the program discriminates in favor of individuals with health problems.

HIPAA nondiscrimination regulations generally prohibit variations in group health plan benefits and premiums based on health status. However, the regulations allow a health plan to vary benefits and premiums based on health status if the variations are made under a wellness program that meets certain requirements. A wide variety of arrangements, including many disease management programs, qualify as wellness programs that are subject to the requirements. The DOL's new checklist shows how to determine if programs meet these requirements.

This checklist follows close on the heels of guidance that the DOL issued in December closing a compliance loophole for wellness programs (see Willis' *Employee Benefits Alert, Issue 123* for details). For a review of the HIPAA requirements for wellness programs, see *Employee Benefits Alert, Issue 94*.



INCENTIVE STRATEGIES

Programs that provide incentives based on health status factors (e.g., cholesterol below 200) must meet several conditions, one of which is a limit on the size of the incentive offered. The limitation generally is 20% of the premium for individual coverage under the plan (both employee and employer share), but can increase to 20% of the premium for family/spousal coverage if the employee's covered spouse or dependents may participate in the wellness program. The limit applies to all of a plan's wellness standards, so that no individual can receive incentives

exceeding the 20% limit, regardless of the number of health standards met. If a plan, for example, provides a premium discount based on meeting a body mass index target and a separate discount due to meeting a cholesterol level target, the two discounts combined cannot exceed the 20% limitation.

At the same time, programs that provide incentives based on standards that do not involve health status factors (e.g., completion of a health risk assessment) can provide unlimited incentives as long as the incentive is equally available to all similarly situated participants.

The new DOL checklist confirms that the two types of incentives can be combined even if the total incentive exceeds the 20% of premium limit. If a plan has a 20% incentive based on meeting a health-related standard such as a body mass index target, that same plan may add a separate 10% incentive that participants earn by completing a health risk assessment. In that case, the 30% total incentive is permissible because completing a health risk assessment is not a health status-related standard.

Many employers have been exploring this kind of combined incentive strategy because they believe that the maximum 20% incentive is insufficient to change employees' behavior.

PERMISSIBLE DISCRIMINATION

The checklist also confirms that the limitations on wellness programs do not apply to programs that discriminate in favor of individuals with adverse health conditions. For example, a plan that pays 100% of the cost for diabetes supplies for diabetics who participate in a disease management program would not violate the nondiscrimination rules. The plan would also be exempt from requirements that apply to other wellness programs that vary benefits based on a health status factor.

HIPAA NOT THE WHOLE STORY

The clarifications provided in the DOL's checklist may be helpful to employers that want to provide more meaningful incentives for employees to meet health goals. It is important to remember, however, that the checklist relates only to compliance with the HIPAA nondiscrimination rules. Wellness programs also raise issues under the Americans with Disabilities Act (ADA), and HIPAA compliance does not assure ADA compliance.



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