

In This Issue

In this second issue of the McGraw Wentworth Benefit Advisor for 2002, we will explain the HIPAA non-discrimination rules as they relate to wellness programs. We will describe the requirements wellness programs must satisfy to qualify as bona fide wellness programs and to avoid violating the HIPAA non-discrimination rules.

We welcome your comments and suggestions regarding this issue of our technical bulletin. For more information on this Benefit Advisor, please contact your Account Manager or visit the McGraw Wentworth web site at www.mcgrawwentworth.com.

“Wellness Programs and the HIPAA Non-Discrimination Rules”

As the cost of providing health care benefits continues to escalate, many employers try to contain this cost by implementing wellness programs that prevent disease and promote good health among their employees. Wellness programs encompass a broad range of programs including smoking cessation, stress management, alcohol and substance abuse, fitness, employee assistance plans and disease prevention.

With the cost of health care benefits increasing, wellness programs are becoming increasingly popular. According to the United States Department of Labor's 1999 National Compensation Survey, 53% of workers participate in health care benefit programs at an average monthly cost to employees of \$48.30 for single coverage and \$169.84 for family coverage. For those employees who may participate in health care benefit programs, 67% must make contributions to these programs for single coverage and 81% must make contributions for family coverage. Employers offer wellness programs to reduce these costs to both employees and employers alike. Currently, 33% of workers have access to employee assistance programs, 9% of workers

have access to fitness centers and 17% of workers have access to other wellness programs.

The Pitfalls in Planning Wellness Programs

Many employers that have implemented wellness programs have demonstrated success in reducing their health care costs. Employers that offer wellness programs that waive co-payments and deductibles or offer premium discounts or rebates, may reduce increasing health care benefit costs to employees.

But employers need to be aware that certain wellness programs may violate the non-discrimination rules under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

The HIPAA non-discrimination rules provide that a group health plan or a health insurance issuer may not require any individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual in the plan on the basis of specific “health



factors” related to that individual or that individual’s dependent. “Health factors” are very broadly defined under these rules, and include: health status, medical conditions, claims experience, receipt of health care, genetic information, and evidence of insurability and disabilities. There is one exception to this HIPAA non-discrimination rule — the group health plan or health insurance issuer may establish premium discounts or rebates or modify co-payments or deductibles in return for adherence to programs of health promotion and disease prevention (e.g., wellness programs).



To ensure that this exception does not eliminate the general HIPAA non-discrimination rule, proposed regulations, issued in January 2001, impose requirements on wellness programs that provide a reward or financial incentive based on the ability of an individual to meet a standard related to a health factor. This type of program would otherwise violate the HIPAA non-discrimination rules unless, under the HIPAA rules, it meets the criteria for a “bona fide wellness program.” For example, a wellness program that offers a premium discount to those employees that submit to a cholesterol test and who have a cholesterol count under 200 violates the HIPAA non-discrimina-

tion rules, unless it qualifies as a bona fide wellness program.

What Constitutes a Bona Fide Wellness Program?

The rules defining what constitutes a “bona fide” wellness program, then, create a safe harbor for those wellness programs that offer premium discounts or similar financial incentives to participants who achieve certain standards related to health factors. If such a wellness program meets the following safe harbor criteria, it is a bona fide wellness program and does not discriminate on the basis of health factors:

- *The reward for the wellness program (including the rewards for other employer-sponsored wellness programs requiring satisfaction of a standard related to a health factor) must not exceed a certain percentage (10%, 15% or 20%) of the cost of employee-only coverage under the plan. (Under the proposed regulations, the percentage has not been determined and the percentage will be contained in the final guidance.) A reward may be in the form of discounts, rebates on premiums or contributions or a waiver of all or part of a cost-sharing mechanism under the plan (co-payments or deductibles).*

- *The wellness program must be reasonably designed to promote good health and prevent disease and must give eligible individuals the opportunity to qualify for the reward under the program at least once a year.*

- *The reward under the program must be available to all similarly situated individuals. This means:*

- *If due to a medical condition, it would be unreasonably difficult for a participant to satisfy the standard for the reward, the program must offer a reasonable alternative standard to the participant to obtain the reward.*

- *If it is medically inadvisable for the participant to attempt to satisfy the otherwise applicable standard for the reward, the program must offer a reasonable alternative standard to the participant to obtain the reward.*

- *The wellness program must disclose, in all materials describing the terms of the program, the availability of a reasonable alternative standard. The proposed regulations provide model language for program sponsors to use in the program materials to satisfy this requirement as follows:*

- ◆ *If it is unreasonably difficult due to a medical condition for you to achieve the standards for the reward under this program, or if it is medically inadvisable*

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for you to attempt to achieve the standards for the reward under this program, call us at [insert phone number] and we will work with you to develop another way to qualify for the reward.

If a wellness program complies with these requirements, it would be a *bona fide* wellness program and would not violate the HIPAA non-discrimination rules. For example, the cholesterol count wellness program referred to above, could become a *bona fide* wellness program by adding a provision to the wellness program that if it is unreasonably difficult due to a medical condition for a participant to achieve the targeted cholesterol count (or if it is medically inadvisable for the individual to attempt to obtain this standard), the program will make available a reasonable alternative standard that takes that medical condition into account. The program materials must also inform participants that this reasonable alternative is available.

Another example of a *bona fide* wellness program is a group health plan that will waive the \$250 annual deductible for the following year for participants who have a body mass index between 19 and 26, determined shortly before the year. Any participant, however, for whom it is unreasonably difficult due to a medical condition to attain this standard, is given the same discount if the participant walks for 20 minutes three days a week or if this is unreasonably difficult, for the participant due to a medical condition, the participant is given the same discount if the participant satisfies a reasonable alternative standard tailored to that individual's situation. All materi-

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als describing the wellness program include the following:

- *If it is unreasonably difficult due to a medical condition for you to achieve a body mass index between 19 and 26 (or if it is medically inadvisable for you to attempt to achieve this body mass index) this year, your deductible will be waived if you walk for 20 minutes three days a week. If you cannot follow the walking program, call us at the number above and we will work with you to develop another way to have your deductible waived - such as a dietary regimen.*



ward that is not contingent upon satisfying a standard related to a "health factor" does not violate the HIPAA non-discrimination rules (even if it does not qualify as a *bona fide* wellness program). For example, wellness programs that offer discounts on fitness club memberships, encourage preventative care by waiving co-payments and deductibles for well-baby visits or reimburse participants for the cost of fitness memberships or for the cost of stop smoking programs (but premium reductions for those that complete stop smoking programs may violate the HIPAA non-discrimination rule), do not violate the HIPAA non-discrimination rules.

When designing health care benefit programs, employers should keep these rules for wellness plans in mind when considering ways to both lower costs and promote the health of their employees. Employers who already have wellness plans in place should review them to determine whether they comply with these HIPAA non-discrimination rules. **MW**

Until final guidance has been issued on *bona fide* wellness programs, government agencies do not intend to take any enforcement action against any plan or insurer that has sought to comply in good faith with these HIPAA non-discrimination rules.

Other Wellness Programs

Having surveyed the rules for *bona fide* wellness programs, employers should keep in mind that a wellness program providing a re-

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