

## **Are wellness programs allowed under HIPAA's nondiscrimination rules?**

The HIPAA nondiscrimination provisions generally prohibit group health plans from charging similarly situated individuals different premiums or contributions or imposing different deductible, copayment or other cost sharing requirements based on a health factor. However, there is an exception that allows plans to offer wellness programs.

If none of the conditions for obtaining a reward under a wellness program are based on an individual satisfying a standard related to health factor, or if no reward is offered, the program complies with the nondiscrimination requirements (assuming participation in the program is made available to all similarly situated individuals). For example:

- A program that reimburses all or part of the cost for memberships in a fitness center.
- A diagnostic testing program that provides a reward for participation rather than outcomes.
- A program that encourages preventive care by waiving the copayment or deductible requirement for the costs of, for example, prenatal care or well-baby visits.
- A program that reimburses employees for the costs of smoking cessation programs without regard to whether the employee quits smoking.
- A program that provides a reward to employees for attending a monthly health education seminar.

Wellness programs that condition a reward on an individual satisfying a standard related to a health factor must meet five requirements described in the final rules in order to comply with the nondiscrimination rules.

The wellness program rules are generally effective for the plan year starting on or after July 1, 2007.

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## **What are the five requirements for wellness programs which base a reward on satisfying a standard related to a health factor?**

1. The total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor is limited – generally, it must not exceed 20 percent of the cost of employee-only coverage under the plan. If dependents (such as spouses and/or dependent children) may participate in the wellness program, the reward must not exceed 20 percent of the cost of the coverage in which an employee and any dependents are enrolled.
2. The program must be reasonably designed to promote health and prevent disease.
3. The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.

4. The reward must be available to all similarly situated individuals. The program must allow a reasonable alternative standard (or waiver of initial standard) for obtaining the reward to any individual for whom it is unreasonably difficult due to a medical condition, or medically inadvisable, to satisfy the initial standard.
5. The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard).

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**How do the wellness program rules apply to a group program that offers a reward to individuals who participate in voluntary testing for early detection of health problems? The plan does not use the test results to determine whether an individual receives a reward or the amount of an individual's reward.**

The plan's program does not base any reward on the outcome of the testing. Thus, it is allowed under the **HIPAA** nondiscrimination provisions without being subject to the five requirements for wellness programs that do require satisfaction of a standard related to a health factor.

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**Can a plan provide a premium differential between smokers and nonsmokers?**

The plan is offering a reward based on an individual's ability to stop smoking.

Medical evidence suggests that smoking may be related to a health factor. *The Diagnostic and Statistical Manual of Mental Disorders*, which states that nicotine addiction is a medical condition, supports that position. In addition, a report of the Surgeon General adds that scientists in the field of drug addiction agree that nicotine, a substance common to all forms of tobacco, is a powerfully addictive drug.

For a group health plan to maintain a premium differential between smokers and nonsmokers and not be considered discriminatory, the plan's nonsmoking program would need to meet the five requirements for wellness programs that require satisfaction of a standard related to a health factor.

Accordingly, under the final rules, this wellness program would be permitted if:

- The premium differential is not more than 20 percent of the total cost of employee-only coverage (or 20% of the cost of coverage if dependents can participate in the program);
- The program is reasonably designed to promote health and prevent disease;

- Individuals eligible for the program are given an opportunity to qualify for the discount at least once per year;
- The program accommodates individuals for whom it is unreasonably difficult to quit using tobacco products due to addiction by providing a reasonable alternative standard (such as a discount in return for attending educational classes or for trying a nicotine patch); and
- Plan materials describing the terms of the premium differential describe the availability of a reasonable alternative standard to qualify for the lower premium.