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## Nondiscriminatory Wellness Programs

### WHAT IS THE INTENTION OF THE FINAL RULES FOR INCENTIVES FOR NONDISCRIMINATORY WELLNESS PROGRAMS?

The intention of the final regulations is to enhance the 2006 HIPAA nondiscrimination and wellness provisions. Specifically, the Affordable Care Act (ACA) incentives for the Nondiscriminatory Wellness regulation:

- increase the maximum permissible reward under a health-contingent wellness program offered in connection with a group health plan (and any related health insurance coverage) from 20 percent to 30 percent of the cost of coverage;
- increase the maximum permissible reward to 50 percent for wellness programs designed to prevent or reduce tobacco use;
- include clarifications regarding the reasonable design of health-contingent wellness programs and the reasonable alternatives that must be offered in order for the program to be nondiscriminatory.

### WHEN DO THE FINAL RULES TAKE EFFECT?

For a group offering a wellness program, these regulations apply to grandfathered and non-grandfathered group health plans for plan years beginning on or after January 1, 2014. Plan sponsors who offer a wellness program beginning on or after January 1, 2014, should consult with their legal counsel regarding whether or not it meets the ACA Nondiscriminatory Wellness requirements.

### HOW IS A "REWARD" DEFINED?

A "Reward" may include both:

1. Providing a reward such as:
  - a discount or rebate of a premium or contribution
  - a waiver of all or part of a cost-sharing mechanism
  - an additional benefit
  - any financial or other incentive
2. Avoiding a penalty such as:
  - a surcharge or other financial or nonfinancial disincentive.

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### WHAT ARE THE TYPES OF WELLNESS PROGRAMS?

There are two types of wellness programs: participatory and health-contingent.

#### **Participatory:**

Programs that either do not provide a reward or do not include any conditions for obtaining a reward that are based on an individual satisfying a standard that is related to a health factor. Examples include:

- a program that reimburses for all or part of the cost of membership in a fitness center;
- a diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.

#### **Health-Contingent:**

There are two categories of health-contingent wellness programs: activity-only and outcome-based.

1. *Activity-only* – Individuals are required to complete an activity related to a health factor to obtain a reward, but are not required to attain a specific health outcome. Examples include:

- a walking program;
- a diet program;
- an exercise program.

2. *Outcome-based* – Individuals are required to attain or maintain specific health outcomes to obtain a reward. Examples include programs that provide a reward for:

- an individual who meets a standard based on an individual test or screening (for example, cholesterol, blood pressure) while requiring individuals who do not satisfy that standard to take additional steps to obtain the reward (for example, meeting with a health coach);
- not smoking as a result of a tobacco cessation program.

### WHAT ARE THE REQUIREMENTS FOR A COMPLIANT HEALTH-CONTINGENT WELLNESS PROGRAM?

Under the final regulations, there are five requirements for health-contingent wellness programs:

- 1. Annual qualification.** Must give participants the opportunity to qualify for the reward at least once per year.
- 2. Amount of reward and/or penalty.** The reward cannot exceed 30 percent of the total cost of coverage, or up to 50 percent with a tobacco cessation program.



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### 3. Reasonable design

- is reasonably designed to promote health or prevent disease;
- has a reasonable chance of improving the health of, or preventing disease in, participating individuals;
- is not overly burdensome;
- is not a subterfuge for discriminating based on a health factor;
- is not highly suspect in the method chosen to promote health or prevent disease.

### 4. Reasonable alternative

- **For activity-only programs.** Must allow a reasonable alternative to those who can show it is unreasonably difficult to attain the standard due to a medical condition, or that is medically inadvisable to satisfy the standard. Under certain circumstances, the plan must provide a second alternative if an individual is medically incapable of meeting the first alternative.
- **For outcome-based programs.** Must give a reasonable alternative to any *individual* who does not meet the initial standard based on a measurement, test, or screening. Under certain circumstances, must give a second alternative to anyone who is unable to meet the first alternative.

**5. Notice of reasonable alternative.** Must disclose availability of reasonable alternative to qualify for a reward in all plan materials describing the wellness program. Disclosure should include contact information for obtaining the alternative and a statement that recommendations of an individual's personal physician will be accommodated.

### WHY DO I HAVE TO OFFER REASONABLE ALTERNATIVE?

Reasonable alternatives are intended to prevent discrimination against individuals for medical or non-medical conditions that make it unreasonably difficult to satisfy the standard or medically inadvisable to attempt to satisfy the standard. The intent of this regulation is that, regardless of the type of wellness program and/or individual health factor, every individual participating in the program should be able to receive the full amount of any reward or incentive.

### HOW DO I GIVE NOTICE OF REASONABLE ALTERNATIVE?

A notice must be provided in all plan materials describing the wellness program. The following sample notice language, or substantially similar language, can be used to satisfy the notice requirement:

*“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.”*



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## HOW CAN INDEPENDENCE ADMINISTRATORS HELP?

As new or significantly revised regulations or guidance take effect, we will provide you with information and resources to help you understand how the regulations affect your health plan(s) and what your plan(s) must do to achieve compliance. To learn more about how Independence can support you in complying with the requirements of the Affordable Care Act or if you have questions about your plan, please contact your Independence Administrators account representative.

**Independence Administrators does not provide legal or tax advice. The final determination of whether the Plan Sponsor meets the requirements of the Affordable Care Act must be made by the Plan Sponsor in consultation with the employer's own legal counsel or tax advisor.**

