



# Wellness Program Incentives and the Affordable Care Act

A Brief Explanation  
July 1, 2013





## I. Introduction

Federal law generally prohibits group health insurance plans from discriminating based on health factors. However, special rules exist to allow employers to make financial incentives a part of their wellness programs — provided they follow certain guidelines.

On June 3, 2013, the federal government issued new rules governing wellness program incentives. The purpose the rules is threefold:

1. To define the responsibilities of wellness program providers and plan administrators
2. To prevent discrimination in group health coverage
3. To increase the maximum rewards allowable under the law

This following is a brief outline of the law and should not be construed as legal advice. [Click here](#) to download a complete copy of the regulations.

## II. Types of Wellness Programs

The rules define two categories of wellness programs: **Participatory** and **Health-Contingent**.

### a. Participatory Wellness Programs

Participatory wellness programs either do not provide rewards of any kind, or do not require participants to satisfy any standard relating to a health factor. Examples include:

- Subsidized gym membership
- Reward for participating in a biometric screening (regardless of the results)
- Reward for attending an optional health education seminar
- Reward for completing a smoking cessation program (regardless of whether the individual stops smoking)

Participatory wellness programs must be made available to all similarly-situated individuals regardless of health status. These programs are not required to adhere to the five requirements described in Section III below.

### b. Health-Contingent Wellness Programs

The rules divide health-contingent wellness programs into two categories:

- **Activity-only:** Reward is based on completing an activity related to a health factor
- **Outcomes-based:** Reward is based on attaining or maintaining a specific health outcome





An example of an activity-only requirement would be to reward employees for participating in a walking program. Participants are simply required to participate, not to achieve any specific outcome.

Outcomes-based programs, on the other hand, have two tiers: (1) a measurement, test, or screening to establish a particular standard, and (2) a program that targets individuals who did not meet the standard.

For example, an outcomes-based program might identify employees with normal cholesterol through a biometric screening and reward these individuals with a discounted insurance premium. Or, the program might require employees with high cholesterol to participate in a seminar before receiving a reward. In either case, because the reward is based on the results of a measurement, test, or screening, the program outcomes-based.

### III. Requirements of Health-Contingent Wellness Programs

All health-contingent wellness programs must follow five guidelines:

#### a. Opportunity to Qualify

Participants must be allowed to qualify for the program at least once per year.

#### b. Size of Reward

The reward offered must be no more than 30 percent of the cost of coverage. For smoking cessation programs, the limit is 50 percent of the cost of coverage.

#### c. Reasonable Design

The wellness program must have a reasonable chance of improving health or preventing disease. In addition:

- It must not be overly burdensome
- It must not be a ploy to discriminate based on health factor
- The method chosen to promote or prevent disease must not be “highly suspect”

#### d. Reasonable Alternative

If an employee cannot meet a health standard because it is unreasonably difficult due to a medical condition, or is medically inadvisable to attempt, the employer must either offer a “reasonable alternative standard” or waive the requirement entirely.

For activity-only programs, employers are allowed require verification (from a physician) that the standard cannot be met due to a medical condition. But for outcomes-based programs, employers are *not* allowed to require verification. This provision is a significant departure. Once an employee declares that an



outcomes-based health standard cannot be met due to a medical condition, the employer must offer a reasonable alternative to the standard.

Additional requirements:

- The time commitment required to comply with the alternative must be reasonable.
- If the employee's primary care physician feels that a standard is medically inadvisable, the health plan must find an alternative that accommodates the physician's recommendations.
- If the "reasonable alternative" standard is participation in an educational program, the employer must either provide it or help the individual find a suitable program at no cost.
- If the "reasonable alternative" standard is participation in a diet program, the employee may be asked to pay a membership fee but not the cost of food.

#### e. Notification of the Alternative Standard

Wellness providers and plan administrators must disclose the availability of an alternative standard in plan materials whenever the specific terms of the wellness program or benefits (premiums, rewards, etc.) are discussed. If the wellness program is simply mentioned, notification is not required.

The rules offer the following samples of disclosure language:

- "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."
- "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."
- "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.)"

## IV. About Wellness Corporate Solutions

Wellness Corporate Solutions, LLC (WCS) is a certified, woman-owned Minority Business Enterprise (MBE). WCS has provided comprehensive wellness services and biometric screenings to more than 150 private- and public-sector clients, ranging in size from 50 to 150,000 employees. WCS is a CLIA-waived, federally-licensed clinical laboratory, licensed to conduct biometric screenings in all 50 states.

For more information, visit <http://www.wellnesscorporatesolutions.com> or call us at (301) 229-7555 or (877) 469-5411.