



# Legislative Brief

## HIPAA Regulations Governing Wellness Programs - FINAL

The Health Insurance Portability and Accountability Act (HIPAA) was originally signed into law in August 1996. Although the HIPAA nondiscrimination regulations generally prohibit group health insurers (Insurers) or group health plans (Employers) from charging similarly situated individuals different premiums or applying different cost-sharing requirements based upon a health factor\*, Employers and Insurers still have many opportunities to offer financial incentives in order to promote health and prevent disease through Wellness Programs.

This Plan Benefit Analysts Legislative Brief summarizes the **final** HIPAA Wellness Program Regulations passed in December 2006. In general, these final regulations follow the guidance previously included within interim regulations released in April 1997 and proposed regulations released in January 2001.

### Effective Date

The final regulations apply to plan years beginning on or after July 1, 2007.

### Reward Given Regardless of Outcome

Employers may offer Wellness Programs that provide a reward to all individuals that participate in the program, regardless of outcome. This type of Wellness Program is **NOT** required to comply with any additional requirements contained within the HIPAA Wellness Program Regulations. Examples of this type of Wellness Program include:

- ✓ Reimbursing employees for the cost of a health club membership, without regard to health factors;
- ✓ Reimbursing employees for the cost of smoking cessation programs, without regard to whether the employee quits smoking; and
- ✓ Providing rewards for participation in a diagnostic testing program.

### Reward Conditioned Upon Outcome

Where a Wellness Program conditions receipt of the reward on an outcome, the program **MUST** comply with the additional requirements contained within the HIPAA Wellness Program Regulations. These requirements are:

- ✓ Limit on Reward. Where the Wellness Program allows the employee to participate, the reward must not exceed 20% of the cost of employee-only coverage (e.g., total amount of employer and employee contributions for the cost of employee-only coverage). Where dependents may participate in the Wellness Program, the reward must not exceed 20% of the cost of the coverage category in which the employee and dependents are enrolled (e.g., total amount of employer and employee contribution for the cost of family coverage).
- ✓ Reasonably Designed To Promote Good Health or Prevent Disease. Wellness Programs must be designed to promote good health or prevent disease. If a Wellness Program has a reasonable chance of improving the health of participants and is not overly burdensome, is not a subterfuge for discriminating based upon a health factor, and is not highly suspect in the method chosen to promote health and prevent disease, the Wellness Program will satisfy this requirement.

\* Health factors include health status, medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability.

- ✓ Annual Opportunity to Qualify For Reward. Wellness Programs must give individuals an opportunity to qualify for the reward at least once per year.
- ✓ Reasonable Alternative Standard. The Wellness Program must provide a reasonable alternative standard for obtaining the reward for certain individuals. This alternative standard must be available for individuals for whom it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard, or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard. A program does not need to establish the specific reasonable alternative standard before the program commences. It is sufficient to determine a reasonable alternative standard once a participant informs the plan that it is unreasonably difficult for the participant due to a medical condition to satisfy the general standard. The final regulations include an example that demonstrates that a reasonable alternative standard could include following the recommendations of an individual's physician regarding the health factor at issue.
- ✓ Disclosure Requirements. All Wellness Program materials must include a description of the general standard and disclose the availability of a reasonable alternative standard.

**Example of a Compliant Wellness Program:**

In conjunction with an annual open enrollment period, an Employer distributes a form to all individuals that, if signed, certifies that they have not used tobacco products in the preceding twelve months. Employees who do not provide this certification are assessed a surcharge that is 20% of the total cost of employee-only coverage. Individuals that are unable to reasonably meet this standard due to a medical condition (e.g., addiction to nicotine) are not assessed the surcharge so long as these individuals participate in a smoking cessation program. The material used to describe the wellness program includes the following disclosure:

*If it is unreasonably difficult due to a medical condition for you to achieve the standard for the reward under this program, or if it is medically inadvisable for you to attempt to achieve the standard for the reward under this program, call us at (444.555.1212) and we will work with you to develop another way to qualify for the reward.*

While the final regulations are substantially the same as the requirements contained within the prior interim and proposed regulations, Employers should take this opportunity to review their Wellness Programs prior to their next plan renewal. The preamble to the regulations discuss several studies, including one published by Hewitt Associates, that found that many Wellness Programs currently in place do not comply with the HIPAA Wellness Program Regulations. Until now, the interim and proposed regulations indicated that a period of nonenforcement in cases of good faith compliance would end upon the applicability date of the final regulations. As the final rules become effective, federal agencies may choose to take enforcement action where Wellness Programs do not comply with the requirements described within this article.

Please contact your Plan Benefit Analysts representative with any questions.