



## What Employers Need to Know Right Now About Health Care Reform

The following is a summary of proposed regulations.  
Some or all of the provisions may change when final rules are issued.

### HIGHLIGHTS OF PROPOSED RULES ON WELLNESS PROGRAMS

On Nov. 20, 2012, the Department of Health and Human Services, the IRS and the Department of Labor jointly issued a *proposed* rule that addresses how wellness programs may operate under PPACA beginning in 2014.

The proposed rule would largely carry forward the rules that have been in effect for wellness programs since 2006. (The agencies view “wellness programs” as virtually any program that is designed to improve employees’ health.) Under both the current and the proposed rule, if a wellness program either has no reward (such as providing free flu shots) or simply rewards participation (such as a program that reimburses the cost of a smoking cessation program, regardless whether the employee actually quits smoking), and the program is equally offered to all similar employees, no limits apply to the program.

In contrast, programs that are results-based (which would be called “health-contingent wellness programs” in the future) would still be required to meet several conditions to be legal. (For details on the requirements, please see **Page 3**.)

The proposed rule would:

- Increase the maximum reward or penalty beginning with the 2014 plan year to 30 percent of the total cost of coverage (up from the current 20 percent limit)
- Provide an exception to the 30 percent maximum reward / penalty for tobacco use and would instead allow a penalty of 50 percent of the total cost of coverage for smoking or a 50 percent reward for not smoking (for an example, please see **Page 3**).
- Require that the employer pay many of the costs of the alternative standard program (such as a membership fee)

- Require the employer to locate an acceptable educational program if that is the alternate standard
- Prohibit limits on the number of times an employee could use an alternative standard (meaning, for example, that an employee would be eligible for the nonsmoker discount if he continues to smoke but participates in a smoking cessation program multiple times)
- Provide new sample language to notify an employee that an alternate standard may be available (to view the new sample language, please see **Page 3**)

The proposed rule may be found [HERE](#).

*Important: This rule is still in the “proposed” stage, which means that there may be changes when the final rule is issued. The public may make suggestions until Jan. 25, 2013, on how the proposed rule should be changed before it is finalized. Employers should view the proposed rule as an indication of how wellness plans will be regulated beginning in 2014, but need to understand that changes are entirely possible.*

## WELLNESS PROGRAM CONDITIONS

The conditions that a wellness program with a health-related standard needs to meet are:

1. It must be reasonably designed to promote health or prevent disease;
2. It must provide a chance to qualify for the reward at least once a year;
3. It must provide an alternative standard for those for whom it is unreasonably difficult due to a medical condition to satisfy the standard;
4. It must describe the availability of the alternative standard in written program materials; and
5. It must cap the reward or penalty at a prescribed percentage of the total cost of coverage.

## REWARDS / PENALTIES

Multiple rewards / penalties are allowed, as long as they do not exceed the applicable and total maximum. The proposed rule includes this example:

**(i) Facts.** An employer sponsors a group health plan. The annual premium for employee-only coverage is \$6,000 (of which the employer pays \$4,500 per year and the employee pays \$1,500 per year). The plan offers employees a health-contingent wellness program focused on exercise, blood sugar, weight, cholesterol and blood pressure. The reward for compliance is an annual premium rebate of \$600. The plan also imposes an additional \$2,000 tobacco premium surcharge on employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program. (Those who participate in the plan's tobacco cessation program are not assessed the \$2,000 surcharge.)

**(ii) Conclusion.** The program satisfies the requirements of this rule because both the total of all rewards (including absence of a surcharge for participating in the tobacco program) is \$2,600 (\$600 + \$2,000 = \$2,600), which does not exceed 50 percent of the total annual cost of employee-only coverage (\$3,000); and, tested separately, the \$600 reward for the wellness program unrelated to tobacco use does not exceed 30 percent of the total annual cost of employee-only coverage, \$1,800.

## SAMPLE LANGUAGE

"Your health plan is committed to helping you achieve your best status. 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 to find a wellness program with the same reward that is right for you in light of your health status."

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