



Brown Winick
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LEGAL BOUNDARIES OF WELLNESS PROGRAMS

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A Firm Commitment to Business™

“ALPHABET SOUP” OF COMPLIANCE ISSUES

- HIPAA
- ADA
- ERISA
- COBRA
- IRC

Some risk-based
discrimination is permitted
but only under “HIPAA
Compliant” program

Non-HIPAA Wellness Programs Test:

- A. The reward is unrelated to a health plan or

B. The reward is related to a health plan but is not contingent on satisfying a standard related to a “health status factor”

“Unrelated to a Health Factor” Defined:

- Reward is not a premium discount/waiver
- Reward is not a reduction/waiver of deductible
- Reward is not made available only to health plan participants

Non-HIPAA Wellness Program examples that are unrelated to a health plan:

- On-site workout facilities
- Work-time for exercise
- Subsidized gym programs
- Healthy menu items
- Weight loss groups

Non-HIPAA Wellness Program examples that are related to a health plan:

- Employer-provided routine physical exams
- Employer-provided health risk assessments
- Waiver of deductibles on preventive Rx drugs
- Waiver of deductibles on certain care
- Non-result based smoking cessation

Wellness Programs requiring HIPAA compliance

- Health plan-related reward **and**
- Reward is conditioned upon achieving a standard related to a health risk factor

Examples of Health Plan-related Rewards:

- Premium discounts or waivers
- Deductible discounts or waivers
- Co-insurance discounts or waivers

Examples of Standards Related to a Health Risk Factor:

- Weight within acceptable limits
- Cholesterol within acceptable limits
- Blood pressure within acceptable limits
- No smoking

HIPAA Compliant Requirements

1. Size of reward may not exceed 20% of the total cost coverage for an employee or family

HIPAA Compliant Requirements:

2. The program must be reasonably designed to promote good health

HIPAA Compliant Requirements:

3. Individuals who are eligible for the program must have the opportunity to qualify for the reward at least once each year.

HIPAA Compliant Requirements:

4. The reward must be available to all similarly-situated individuals
 - Those unable to try or achieve the standard due to a medical condition must receive the reward

HIPAA Compliant Requirements

5. The wellness program materials must disclose the availability of alternate standards for those who need it.

ADA

The ADA limits medical examinations to three situations:

- Pre-Employment, Post-Offer
- Fitness for Duty Exams
- Voluntary Exams

EEOC: A program cannot be voluntary if an employee is penalized for non-participation

**EEOC: HIPAA does not
“trump” the ADA**

ERISA

To the extent the wellness program provides a medical benefit, it is subject to ERISA

ERISA Coverage Requires:

- Plan Documents
- Summary Plan Description
- Form 5500

To avoid ERISA, many employers want the wellness program to be considered part of the comprehensive health plan

COBRA

To the extent the wellness program provides a medical benefit, it is subject to COBRA

COBRA beneficiary has
the right to pay for
continuation of coverage

COBRA beneficiary is
guaranteed notice of
right to continuation of
coverage

Tax Implications of Wellness Program

- De minimis non-cash incentives not taxable
- Otherwise, cash/non-cash incentives are taxable