

# WELLNESS PROGRAMS UNDER THE AFFORDABLE CARE ACT

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# Wellness Programs – New Nondiscrimination Rules

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- ACA increased maximum permissible reward under a health-contingent wellness program from 20% to 30% of the cost of health coverage, and that further increase the maximum reward to as much as 50% for programs designed to prevent or reduce tobacco use;
- New regulations set forth revised nondiscrimination rules that turn on whether program is “Participatory” or “Health Contingent”
- If “Participatory” only, exempt from HIPAA bona fide wellness program rules
- If “Health Contingent”, then subject to HIPAA wellness rules, based on whether “activity-based” or “outcome-based”



# Participatory Wellness Programs

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## PARTICIPATORY WELLNESS PROGRAMS

Reward Is Not Based on Individual Satisfying Standard Related to a Health Factor  
Not Required to Meet 5 Requirements of HIPAA Wellness Rules

### Examples:

- Reimburse fitness center membership cost
- Reward to participate in diagnostic testing, not based on outcomes
- Deductible or copayment waiver to encourage preventive care, such as prenatal care or well-baby visits
- Reward or reimbursement for smoking cessation program, regardless of whether employee quits smoking
- Reward for attending monthly, no-cost health education seminar
- Reward to complete health risk assessment without further action required by employee (educational or otherwise) with regard to identified health issues

# Health-Contingent Wellness Program

HEALTH-CONTINGENT WELLNESS PROGRAMS	
Individual is Require to Satisfy a Standard Related to a Health Factor to Obtain Reward	
The Programs Must Meet All FIVE Requirements of HIPAA Wellness Rules	
NEW! Activity-Based	NEW! Outcome-Based
<p>Requires individual to perform or complete an activity related to health factor to obtain reward, but does not require individual to attain or maintain specific health outcome.</p> <p>Examples</p> <p>Walking, diet, or exercise programs where some individuals may be unable to or have difficulty participating or completing due to a health factor, such as asthma, pregnancy, or recent surgery</p> <div style="text-align: center;">  </div>	<p>Requires individual to attain or maintain specific health outcome in order to obtain reward.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>• Reward for not smoking</li> <li>• Reward for attaining certain results on biometric screening</li> <li>• Biometric screening that tests for risk factors (e.g., high cholesterol, high glucose level) and provides reward to individuals within healthy range, while requiring individuals outside health range or at risk to take additional steps to obtain same reward, such as to meet with health coach</li> </ul>

# Wellness Rule #1: Annual Qualification

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HEALTH-CONTINGENT WELLNESS PROGRAMS	
Activity-Based	Outcome-Based
Must give individuals opportunity to qualify	Same



# Wellness Rules #2: Limit on Amount of Award

HEALTH-CONTINGENT WELLNESS PROGRAMS	
Activity-Based	Outcome-Based
<p>NEW! Non-Tobacco Programs (e.g., BMI, cholesterol) — Limit is up to 30% of cost of coverage</p> <p>NEW! Tobacco Programs — Limit is up to 50% of cost of coverage</p> <p>NEW! Limit on total reward is 50% of cost of coverage</p> <ul style="list-style-type: none"> <li>• 30% reward for BMI + 20% for tobacco use — Meets Limit</li> <li>• 10% reward for BMI + 40% for tobacco use — Meets Limit</li> <li>• 0% for BMI + 50% for tobacco use — Meets Limit</li> <li>• 30% for BMI + 50% for tobacco use — Not Allowed (only allowed up to 50% total when include tobacco)</li> </ul>	<p>Same</p> 

# Wellness Rule #3: Reasonable Design

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## HEALTH-CONTINGENT WELLNESS PROGRAMS

### Activity-Based

- Must be reasonably designed to promote health or prevent disease
- Program will satisfy standard if has reasonable chance of improving health or preventing disease, is not overly burdensome, is not a subterfuge for discrimination based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease
- Based on all relevant facts and circumstances

### Outcome-Based

Same (but additional rules related to Reasonable Alternative below)

## Wellness Rule #4: Reasonable Alternative

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- Activity-Based programs must follow the "Medical Reasonable Alternative."
- Outcome-Based programs must follow the "Reasonable Alternative for All."

HEALTH-CONTINGENT WELLNESS PROGRAMS	
Activity-Based	Outcome-Based
<p>Medical Reasonable Alternative Only</p> <p>Must provide alternative for individuals for whom it is unreasonably difficult due to a medical condition to satisfy standard or medically inadvisable to attempt to satisfy standard</p>	<p>NEW! Reasonable Alternative Required for all</p> <ul style="list-style-type: none"><li>• Must provide alternative for any individual" who does not meet the initial standard based on a measurement, test, or screening that is related to a health factor</li><li>• Alternative required regardless of medical Condition</li></ul>

## Wellness Rule #4: Reasonable Alternative Guidelines

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Not required to determine alternative in advance, may determine upon request by individual. May decide to waive medical standard altogether (rather than determine alternative).

Based on all facts and circumstances, with following guidelines:

- If alternative is completion of educational program, plan must make program available or assist employee in finding program (instead of requiring individual to find program unassisted). Plan may not require employee to pay for cost of program.
- If time commitment required, must be reasonable (example: requiring nightly attendance at one-hour class would be unreasonable).
- If alternative is diet program, plan must pay any membership or participation fee (not required to pay for food).
- If individual's personal physician says plan standard is not medically appropriate for individual, plan must provide alternative that accommodates recommendations of personal physician.
- Plan may impose cost sharing for medical items or services furnished pursuant to physician's recommendation.

# Wellness Rule #4: Reasonable Alternative – Doctor’s Notes

HEALTH-CONTINGENT WELLNESS PROGRAMS		
	Activity-Based	Outcome-Based
Doctor's Note Allowed?	<p>Yes — if reasonable under circumstances, plan may seek verification from individual's personal physician that health factor makes it unreasonably difficult or medically inadvisable to satisfy Activity-Based wellness program.</p> <p>Reasonable under circumstances if medical judgment required to evaluate validity of request for alternative.</p>	<p>No — since alternative for Outcome-Based standards must be provided to all who fail test (regardless of health reason).</p> <p>But if alternative is Activity-Based, go back to Activity-Based column, where doctor's note may be allowed.</p>



# Wellness Rule #4: Reasonable Alternative, If Alternative is Activity-Based or Outcome-Based

Health Contingent Wellness Program	
Activity-Based	Outcome-Based
<ul style="list-style-type: none"> <li>If alternative is a second Activity-Based standard, must start at top of Activity-Based column and may need to offer another alternative due to medical reasons.</li> </ul> <p>Example: If Activity-Based standard is to run 3 miles, and individual has medical reason cannot run, may set alternative as Activity-Based standard of walking twice a week. If individual also cannot walk due to medical reasons, would need third alternative.</p> <ul style="list-style-type: none"> <li>If alternative is Outcome-Based, run through analysis in Outcome-Based column to determine whether additional alternative needed.</li> </ul>	<ul style="list-style-type: none"> <li>If alternative is Activity-Based, run through analysis in Activity-Based column to determine whether additional alternative needed.</li> <li>If alternative is second Outcome-Based standard, must start at top of Outcome-Based column and may need to offer another alternative, plus two special rules below.</li> </ul> <p>Special Rules if Alternative is Also Outcome-Based:</p> <ul style="list-style-type: none"> <li>If alternative is to meet different level of same standard, must give additional time to comply.</li> </ul> <p>Example: If standard is BMI, and alternative is BMI that is easier to reach, must give realistic time to reach, such as within year. Individual then earns same reward as if met initial standard (so plan may need to pay reward retroactively).</p> <ul style="list-style-type: none"> <li>Must allow individual to request that alternative will be to comply with recommendations of personal physician (if personal physician "joins in"). Individual can make request at any time, and personal physician can adjust recommendations at any time, consistent with medical appropriateness.</li> </ul>

# Wellness Rule #5: Notice of Reasonable Alternative

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HEALTH-CONTINGENT WELLNESS PROGRAMS	
Activity-Based	Outcome-Based
<ul style="list-style-type: none"><li>• Must disclose in all plan materials describing wellness program the availability of reasonable alternative to earn reward or waiver of standard</li><li>• Must include contact information and statement that recommendations of individual's personal physician will be accommodated</li><li>• Updated sample language</li></ul>	<p>Same</p> <p>Also must include in any disclosure to individual that he or she did not satisfy Outcome-Based standard (such as in screening results)</p>

# QUESTIONS?

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