

HIPAA and Wellness Programs

In an effort to help control escalating health care costs, many employers offer various types of programs designed to encourage employees to live healthier lifestyles. If an employer's wellness program is connected to an ERISA covered group health plan, that program must comply with the HIPAA nondiscrimination provisions.

Wellness programs that reward employees based on factors other than a health factor generally do not discriminate. For example, a reward for employees based on participation in a program (such as gym membership or attending nutrition classes) rather than outcome (such as amount of weight lost) does not violate HIPAA's nondiscrimination provisions.

When a program offers a reward (such as reduced insurance premiums) to employees who achieve a health-related goal (such as weight loss or not using tobacco products), that program must meet the following criteria in order to comply with HIPAA's nondiscrimination provisions:

- ◆ The total amount of the reward offered cannot exceed 20% of the applicable cost of coverage;
- ◆ The program must be reasonably designed to promote health or prevent disease;
- ◆ Individuals eligible to participate must be given the chance to qualify at least once per year;
- ◆ The reward must be available to all similarly situated individuals;
- ◆ The program must have a reasonable alternative standard for obtaining the reward for any individual for whom, for that period: (a) it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; or (b) it is medically inadvisable to attempt to satisfy the otherwise applicable standard; and
- ◆ The program must disclose the availability of the reasonable alternative in all plan materials describing the program.