



# Health Policy Brief

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## **Workplace Wellness Programs.** New draft rules elaborate on Affordable Care Act provisions expanding employers' ability to spur workers to improve their health.

### WHAT'S THE ISSUE?

The poor health habits of many workers, growing rates of chronic disease, and the rising cost of health benefits have created new interest in workplace wellness programs. Employers value these programs as a way to reduce absenteeism and employee turnover, and to offer a benefit that is appealing to many current and prospective employees. Some evidence also suggests that comprehensive wellness programs may pay off for employers by reducing their expenditures for employees' health care.

At the same time, there's debate over how best to structure wellness programs. Should programs offer "carrots"—financial rewards for participating in wellness programs? Should they come with "sticks," or penalties for not participating in them? Should either carrots or sticks be tied to a person's success in meeting health goals, such as managing blood pressure or losing weight?

The Affordable Care Act will, as of 2014, expand employers' ability to reward employees who meet health status goals by participating in wellness programs—and, in effect, to require employees who don't meet these goals to pay more for their employer-sponsored health coverage. Some consumer advocates argue that this ability to differentiate in health coverage costs among employees is unfair and will amount to employers' policing workers' health.

This brief explains trends in wellness programs, details changes in the law starting in 2014, and highlights issues to watch.

### WHAT'S THE BACKGROUND?

Most employers who provide health insurance also provide some type of wellness benefit. The 2012 Kaiser Family Foundation and Health Research and Educational Trust annual survey of employer health benefits found that 63 percent of companies with three or more employees that offered health benefits also offered at least one wellness program. In addition, 60 percent of these companies offered wellness benefits to spouses or dependents of employees.

The larger the company, the more likely it was to offer a wellness program; in fact, almost all companies with 1,000 or more employees offered one. Larger employers usually run wellness programs themselves. For small companies, wellness programs are typically run by the same firms that administer the employer's health benefits plan or by another entity referred to as a third-party administrator.

**WELLNESS PROGRAM CONTENT:** Typical features of wellness programs are health-risk assessments and screenings for high blood pressure and cholesterol; behavior modification programs, such as tobacco cessation, weight management, and exercise; health education, including classes or referrals to online sites for health advice; and changes in

the work environment or provision of special benefits to encourage exercise and healthy food choices, such as subsidized health club memberships (Exhibit 1).

The research literature indicates that wellness programs reduce health care costs. A review of 36 peer-reviewed studies of wellness programs in large firms found that average employer medical costs fell \$3.27 for every dollar spent on wellness programs, and costs for days that employees were absent fell an average of \$2.73. Similarly, a 2005 meta-analysis of 56 published studies of health promotion programs at organizations of all sizes resulted in an overall reduction of about 25 percent in sick leave, health plan costs, and workers compensation and disability costs.

**INDUCEMENTS TO PARTICIPATE:** Although almost all workplace wellness programs are voluntary, employers are increasingly using incentives to encourage employee participation. These incentives range from such items as t-shirts or baseball caps to cash or gifts of significant value. Studies indicate, moreover, that financial incentives do prompt more employees to participate in wellness programs.

Employers are also linking participation in wellness programs to employees' costs for health coverage—for example, by reducing premium contributions for workers who are in wellness programs, or by reducing the amounts they must pay in deductibles and copayments when they obtain health services.

Another trend among employers who offer multiple health plans is to allow participation in a comprehensive plan only to those employees who agree to participate in the wellness program. Those employees who do not participate in a wellness program are offered a less comprehensive plan, or one that requires them to pay more in premiums or cost sharing.

One 2011 survey of about 600 large US employers found that nearly half already employ or plan to implement financial penalties over the next three to five years for employees who don't participate in wellness programs. More than 80 percent of those employers who use or plan to use penalties say they will do so through higher premiums.

Although these incentives and disincentives do prompt workers to participate in wellness programs, the evidence is mixed on whether the result is real improvements in health outcomes. And to date, there have been no published, independent studies on how changes in premiums or cost sharing affect the health outcomes of workers.

Gautam Gowrisankaran of the University of Arizona in Tucson and coauthors evaluated the effectiveness of a wellness program introduced in 2005 by BJC HealthCare, a hospital system in St. Louis, Missouri. The program was associated with a 41 percent decrease in hospitalizations for six targeted conditions, including diabetes and hypertensive heart disease. Although inpatient costs decreased, the reductions were counterbalanced by nearly equivalent increases in noninpatient costs, such as for drugs. Overall, the program did not save employers money in the short term.

On the other hand, a series of studies conducted by researchers at the University of Pennsylvania showed positive results associated with programs using financial rewards. One study found that financial incentives were effective in producing weight loss, but the results were not fully sustained seven months after the program ended. In another study, financial rewards significantly increased rates of smoking cessation among 878 employees of a large US company. The group receiving the financial incentives also had a higher participation rate in the smoking cessation program.

However, the use of financial incentives can also be problematic. Jill Horwitz of the University of California, Los Angeles, School of Law and coauthors examined randomized controlled trials of wellness programs. They

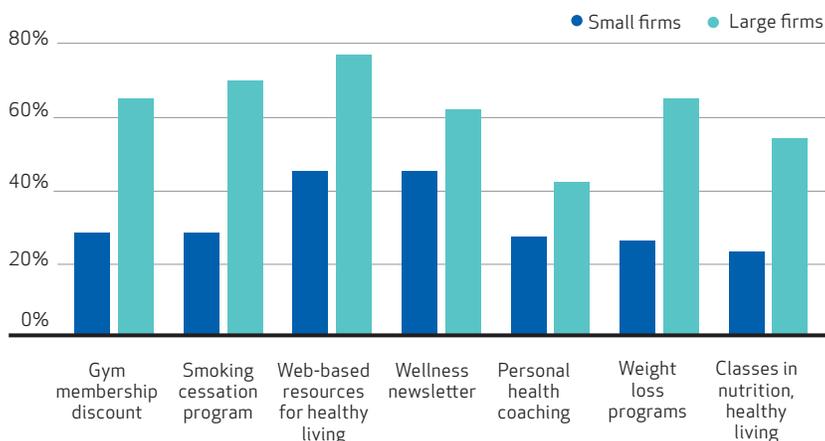
# 63%

## Companies with wellness programs

In a survey, 63 percent of companies with three or more employees that offer health benefits said that they also offer at least one wellness program.

### EXHIBIT 1

Percentage of Companies Offering a Particular Wellness Program to Their Employees, by Firm Size, 2012



**SOURCE** Kaiser Family Foundation and Health Research and Educational Trust, "Employer Health Benefits: 2012 Annual Survey," September 11, 2012. **NOTE** "Small firms" are those with 3–199 workers; "large firms" are those with 200 or more workers.

# 25%

## Reduction in sick leave, costs

Health promotion programs cut sick leave, health plan costs, and workers compensation and disability costs by about 25 percent.

**“Most employers who provide health insurance also provide some type of wellness benefit.”**

found that research raises doubts that employees with health risk factors, such as obesity and tobacco use, spend more on medical care than other employees. This suggests that savings from wellness programs may come from shifting costs from healthier employees to those with greater health risks—a potential form of discrimination based on health status.

### WHAT'S IN THE LAW?

Employer wellness programs must comply with a number of federal and state requirements, such as the Americans with Disabilities Act of 1990, the Genetic Information Nondiscrimination Act of 2008, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The issues discussed in this brief relate mostly to HIPAA provisions that prohibit employer health benefit plans from discriminating against people based on any factor connected with their health status.

For example, employers offering a health plan must allow all qualified employees to enroll and may not require larger premium contributions from enrollees who have medical conditions. HIPAA does allow employers to provide rewards for employee participation in a wellness program. Wellness programs that are separate from the employer health plan may be subject to other state and federal nondiscrimination laws, such as the Americans with Disabilities Act, but are not subject to the HIPAA nondiscrimination rules.

**TWO PROGRAM TYPES:** HIPAA regulations, finalized in 2006 and also codified in the Affordable Care Act, categorize wellness programs into two groups. The first consists of those programs that are available to all similarly situated people and do not require a participant to meet any standard related to health status to receive a reward. These programs, referred to as “participatory wellness programs,” do not need to meet any HIPAA nondiscrimination requirements other than those described above. Examples of participatory wellness programs include gym memberships or tobacco cessation programs offered by an employer without regard to whether participants actually lose weight or quit tobacco use.

The second category, “health-contingent wellness programs,” includes programs that require a person to meet a health status standard to obtain a reward. Rewards may be in the form of premium discounts or rebates, lower cost-sharing requirements, the absence of a surcharge, or extra benefits.

**NEW PROPOSED FEDERAL REGULATIONS:** On November 20, 2012, the Departments of Health and Human Services, Labor, and the Treasury jointly released proposed rules that clarified and amended certain standards for such nondiscriminatory health-contingent wellness programs. These programs must meet the following five conditions.

- The total of all rewards that can be offered to an individual or to a family under the program has been increased from 20 percent (the level previously allowed under HIPAA) to 30 percent of the total cost (employer and employee portions) of individual or family health benefits coverage. The maximum amount of rewards may be increased by an additional 20 percent (up to a maximum of 50 percent) to the extent that the additional amounts are attributable to tobacco use prevention or reduction.

- The wellness program must be reasonably designed to improve health or prevent disease and must not be overly burdensome. The program must offer a different, reasonable means of qualifying to any person who does not meet the standard based on measurement, testing, or screening. For example, people with high cholesterol levels who cannot reasonably be reduced below a program’s standard could instead qualify by meeting regularly with a dietitian. The wellness program must also not be a subterfuge for discrimination based on a health factor and must not be highly suspect in the method chosen to promote health or prevent disease. For example, a program that rewards employees for climbing stairs rather than using an elevator, and does not offer a reasonable alternative to employees who are confined to wheelchairs, might be considered discriminatory.

- People must be given a chance to qualify for the reward or rewards at least once a year.

- The full reward must be available to all similarly situated people, and a reasonable alternative for obtaining the full reward must be provided for those with a medical condition that makes it unreasonably difficult or medically inadvisable to meet the standard. In lieu of providing an alternative standard, a plan or issuer may waive the standard and provide the reward. For example, a program may opt to waive a requirement related to weight for pregnant participants.

- The availability of the alternative must be disclosed in wellness program materials. It

# 50%

## Reward percentage

The limit on the total allowed amount of wellness program rewards is 50 percent of employee health benefit costs when tobacco use prevention or reduction is involved.

**“Employers are also linking participation in wellness programs to employees’ costs for health coverage.”**

must be written in language that is both easy to understand and also increases the likelihood that those who qualify for the alternative will contact the plan or issuer to request it.

These proposed rules would apply to group health plans and group health insurance coverage for plan years beginning on or after January 1, 2014. They would also apply to “grandfathered” health care plans—those that were in existence at the time the Affordable Care Act was implemented in March 2010 and that are exempt from some other health reform provisions.

Whether rewards for participating in a wellness program are viewed by employees as incentives or penalties may depend on how the program is structured. An example of a wellness program permissible under HIPAA would be a hypothetical employer health plan that offered generous rewards for both meeting a cholesterol standard and for not using tobacco.

Such a plan might be structured as follows: The total annual cost of employee-only health insurance coverage under the plan is \$5,000—\$2,500 of which was paid by the employer and \$2,500 paid by the employee. However, enrollees could receive a \$1,500 premium reduction as a reward for having a total cholesterol level of less than 200. The program would also reduce the employee premium by an additional \$1,000 for those who certified that they had not used tobacco during the previous year. The plan offered reasonable alternatives, such as those described above, to those for whom it was unreasonably difficult, or medically inadvisable, to meet the requirements. Thus, enrollees who met both program requirements in this example could have their entire share of the premium reduced to zero.

This hypothetical program would meet the five HIPAA requirements because, first, the \$1,500 reward for meeting the cholesterol requirement is 30 percent of the total cost of coverage, the maximum allowed by the regulations. Second, the \$1,000 reward related to tobacco use is 20 percent of the total cost of coverage, the additional percentage allowed for programs addressing tobacco use. Third, an alternative was provided.

As mentioned above, wellness plans can also impose penalties. An example would be a hypothetical plan that imposed a \$600 surcharge on an enrollee’s health insurance premium if the person does not complete a health assess-

ment. If the total annual cost of coverage for the plan is normally \$5,000, the \$600 penalty would be allowed because it is less than 30 percent of the cost of coverage.

The Departments of Health and Human Services, Labor, and the Treasury requested comments on the proposed rules by January 25, 2013. The federal government will consider the comments in adopting the final regulations that will be published sometime thereafter.

## WHAT ARE THE CONCERNS?

There is widespread support for wellness initiatives in the workplace among both employers and employees. However, business groups, consumer advocates, insurance companies, and even several members of Congress have expressed concerns over various aspects of the proposed workplace wellness rules. In particular, concerns include the health-contingent programs described above that tie rewards or penalties to people’s achieving standards related to health status, especially arrangements that affect employee health insurance premiums or cost-sharing amounts.

In general, business groups, including the US Chamber of Commerce, want employers to have maximum flexibility to design programs with rewards or penalties that will encourage employees to not only participate but also to achieve and maintain measurable health status goals, such as quitting tobacco use or reducing body mass index. They argue that people should bear responsibility for their health behavior and lifestyle choices and that it is unfair to penalize an employer’s entire workforce with the medical costs associated with preventable health conditions as well as the costs of reduced productivity.

Unions, consumer advocates, and voluntary organizations such as the American Heart Association are generally wary of the health-contingent wellness initiatives that provide rewards or penalties based on meeting health status goals. They are concerned that, rather than improving health, such approaches may simply shift health care costs from the healthy to the sick, undermining health insurance reforms that prohibit consideration of health status factors in determining insurance premium rates.

They argue that such incentives are unfair because a person’s health status is a result of a complex set of factors, not all of which are

completely under the person's control. For example, genetic predisposition plays a significant role in determining many health status factors, including such attributes as excess weight, blood pressure, blood sugar, and cholesterol levels. Consumer advocates also caution that poorly designed and implemented wellness initiatives may have unintended consequences, such as coercing a person with a health condition to participate in an activity without adequate medical supervision.

These arguments are some of the reasons the newly proposed federal regulations would require that health-contingent wellness programs must not be overly burdensome on employees, and must also offer a different, reasonable means of qualifying to any person who does not meet the standard based on measurement, testing, or screening

**BARRIERS TO WELLNESS:** Consumers Union and other groups have expressed concerns that by instituting programs designed to alter employees' behavior, employers may be crossing the line with regard to privacy issues. Another concern is that tying the cost of insurance to the ability to meet certain health status goals could discriminate against low-income people or racial and ethnic minorities. These people are more likely to have the health conditions that wellness programs target and also may face more difficult barriers to healthy living.

These barriers may include some that are work related, such as having higher levels of job stress; job insecurity; and work scheduling issues. Barriers outside of work may include personal issues, such as financial burdens, and environmental factors, such as unsafe neighborhoods, poor public transportation, and lack of access to healthy food.

In addition, some critics warn that wellness program requirements may be used to discourage employees from participating in their employers' health benefits plan by making their participation unaffordable. Employers might use a system of rewards or penalties totaling thousands of dollars annually to coerce employees who cannot meet health status goals to seek coverage elsewhere, such as through a spouse's plan; a public option, such as Medicaid; or a separate private plan purchased through the new health insurance exchanges. Consumers Union argues that out-of-pocket costs associated with wellness programs must

remain within the annual limits established by the Affordable Care Act.

There are provisions in the Affordable Care Act to discourage such employer behavior; for instance, companies with more than 50 employees are subject to penalties if even one employee obtains subsidized health insurance through an exchange. However, the extent to which these provisions will be effective is not yet known.

## WHAT'S NEXT?

The federal government will issue final rules regarding workplace wellness plans later this year. Several issues related to employer wellness programs and requirements related to health insurance coverage under the Affordable Care Act will still need to be addressed through the regulations. For example, employees who have access to employer-provided coverage may not purchase coverage through exchanges, and receive federal subsidies to offset some of the costs, unless the premiums they pay toward their employer-sponsored coverage exceed 9.5 percent of family income. In an April 30, 2013, notice of proposed rule-making, the Internal Revenue Service (IRS) proposes that premium reductions from wellness incentives not be taken into account in determining the total proportion of premium paid by an employee. The one exception would be nondiscriminatory tobacco cessation programs.

Similarly, people with access to employer-provided coverage will be allowed to purchase coverage through the exchange—and their large employers will be penalized—if the employer-provided coverage does not cover at least 60 percent of the average costs of benefits, a threshold referred to as Minimum Value. Employers had hoped that reduced cost sharing earned through wellness programs could be counted toward that 60 percent. But in the same April 30, 2013, proposal, the IRS says that because “certain individuals inevitably will face barriers to participation [in wellness programs] and fail to qualify for rewards only wellness programs,” employers may not use reduced cost sharing to achieve Minimum Value. Again the one exception would be nondiscriminatory tobacco cessation programs. The public has until July 2 to submit comments. ■

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