The premise and promise of wellness programs is that healthy employees make happier and more productive employees. Wellness programs can also help curb the ever-climbing costs of healthcare insurance coverage; healthy employees don’t make as many healthcare claims.

Some of the barriers that companies run into with wellness programs include time and money, as well as buy-in from executives, who want to see the bottom-line results, and employees, who don’t necessarily want to be told what to do in their private lives. However, one item that should not be considered a hurdle is the relatively new set of nondiscrimination provisions under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which became effective earlier this year.

When HIPAA Applies
For wellness programs that do not reward individuals with such benefits as lower healthcare insurance premiums or co-payments for meeting a certain health standard, the new rules don’t apply. Wellness programs typically offer memberships to fitness centers, diagnostic testing, education on health topics, and weight-loss or smoking-cessation assistance, and they don’t require individuals to meet a standard. If, however, wellness programs do require individuals to meet a standard related to a health factor to achieve a reward, the new HIPAA nondiscrimination rules apply.

HIPAA Nondiscrimination
In general, the nondiscrimination provisions prohibit health plans from charging similarly situated individuals different premiums or contributions based on these health factors.

• Health status
• Medical condition, including physical and mental illnesses
• Claims experience
• Receipt of healthcare
• Medical history
• Genetic information
• Evidence of insurability
• Disability

The nondiscrimination provisions also prohibit plans from requiring similarly situated individuals to satisfy differing deductible, co-payment, or other cost-sharing requirements.

However, the provisions do not prevent a plan from establishing premium discounts or rebates or modifying otherwise applicable co-payments or deductibles in return for adherence to programs of health promotion and disease prevention or wellness programs.

To illustrate, let’s say Company B has a wellness program that rewards employees who achieve certain wellness standards, and one of those standards is lowering cholesterol to normal levels. Joe Employee has high cholesterol, and if he were to lower it to a normal level,
he would be rewarded with a discount on his insurance premiums. Since cholesterol level is a health status, this would appear to be in violation of the nondiscrimination provisions because the reward is based on a health factor. But if the new rules prohibit such a goal and reward, are employers prohibited from encouraging employees to take on healthy lifestyles through financial rewards?

Fortunately, there is an exception to the general rule prohibiting discrimination based on a health factor if the reward, such as a premium discount or waiver of a cost-sharing requirement, is based on participation in a wellness program. However, there are a few compliance hoops to jump through.

**HIPAA Hoops**

Wellness programs that base rewards on an individual satisfying a standard related to a health factor must meet the following five requirements in order to comply with the nondiscrimination rules.

1. The total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor is limited. Generally, it must not exceed 20 percent of the cost of employee-only coverage under the plan. If dependents may participate in the wellness program, the reward must not exceed 20 percent of the cost of the coverage in which an employee and any dependents are enrolled.

2. The program must be designed to promote health and prevent disease.

3. The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.

4. The reward must be available to all similarly situated individuals. The program must allow a reasonable alternative standard or waiver of initial standard for obtaining the reward to any individual for whom it is unreasonably difficult to satisfy the initial standard.

5. The plan must disclose the terms of the program and the availability of a reasonable alternative standard (or a waiver).

So, if Joe Employee of Company B had to get his cholesterol level down to a healthy level in order to receive a discount on his premium, but his doctor indicated that this was unreasonably difficult because Joe's genetic makeup was such that normal levels were not attainable, Company B's wellness program would have to come up with an alternative standard for Joe Employee to meet. Perhaps it could be exercising three times a week for 20 minutes, as exercise is known to help lower cholesterol levels. If Joe didn't meet the alternative standard during the first year, he would need to be allowed to try for it each year.

In addition, the discount should not be more than 20 percent of the cost of coverage, and Company B must let individuals know about the program and that alternative standards are available for those who need them.

These hoops are not major hurdles, and because the alternative standards do not have to be identified before the program begins, they can be customized as needed. Coming up with alternative standards may be as simple as focusing on what the individual can do, instead of what he or she can't do. Organizations can also ask for verification from an individual's doctor.

**Conclusion**

Most employers want to help their employees be productive and succeed, and wellness programs can promote employee health and productivity. With the potential win-win situation presented by wellness programs, organizations should not let the HIPAA nondiscrimination rules get in the way.

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