Agencies Issue FAQs Clarifying Wellness Program and Other Health Plan Requirements Related to COVID-19 Vaccines

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The DOL, Treasury Department, and HHS have jointly issued a set of FAQs that provide helpful clarifications regarding certain requirements under the CARES Act, the HIPAA nondiscrimination rules (the "***Nondiscrimination Rules***"), and the Affordable Care Act (the "***ACA***") related to COVID-19 vaccines ("***Vaccines***").

Wellness Programs under the Nondiscrimination Rules

Among other items, the FAQs provide guidance under the Nondiscrimination Rules regarding an employer's imposition of a premium discount under a wellness program for an individual's receipt of a Vaccine. If the wellness program is itself, or is part of, a group health plan that is not otherwise exempt from the Nondiscrimination Rules, the FAQs confirm that a premium discount would constitute a "health-contingent, activity-only" wellness program that must, among other requirements, offer a "reasonable alternative standard" to qualify for the discount for individuals for whom it is unreasonably difficult due to a medical condition, or medically inadvisable, to receive the Vaccine. Offering such an individual the option to attest to following other COVID-related guidelines, such as complying with the CDC's mask guidelines for unvaccinated individuals, would qualify as the required "reasonable alternative standard" under the Nondiscrimination Rules.

The FAQs do not address wellness incentives offered by employers as part of workplace policies, which are unrelated to their group health plans. Further, employers should be aware that all wellness programs (whether or not group health plans) may be subject to legal requirements under other laws, such as the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, which are not covered by the FAQs.

ACA and the CARES Act

The FAQs also clarify (i) the treatment of premium discounts and surcharges for receiving, or not receiving, Vaccines for purposes of determining the affordability of health coverage under the ACA's employer shared responsibility rules, and (ii) the effective date of the group health plan "preventive care" coverage requirement under the CARES Act with respect to any CDC-amended Vaccine authorization (for example, regarding booster Vaccines or the expansion of the age groups for whom the Vaccine is authorized or approved).

The FAQs are available here.

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