

Departments Release Final Rules on Workplace Wellness Programs under the Affordable Care Act

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The Departments of Labor, Health and Human Services, and the Treasury (the **Departments**) jointly released final rules regarding nondiscriminatory employment-based wellness programs. The final rules do not markedly change the substance of proposed rules released by the Departments on November 26, 2012, and they apply to both grandfathered and non-grandfathered group health plans for plan years beginning on or after January 1, 2014. The final rules continue to divide wellness programs into two categories: participatory wellness programs, which make up the majority of wellness programs, and health-contingent wellness programs. The final rules increase the maximum permissible reward under a health-contingent wellness program offered in connection with a group health plan from 20 percent to 30 percent of the cost of coverage, and further increase the maximum permissible reward up to 50 percent for a wellness program aimed at smoking cessation. A key difference between these final rules and the proposed rules is the subdivision of health-contingent wellness programs into activity-only wellness programs or outcome-based wellness programs. Activity-only wellness programs require an individual to complete an activity related to a health factor, such as walking, dieting, or exercise programs, to receive a reward, regardless of whether the individual attains or maintains a specific health outcome. Outcome-based wellness programs generally require a measurement, test, or screening as part of an initial standard, such as measuring one's cholesterol, blood pressure, or glucose level, coupled with a larger program that imposes additional wellness activities upon those individuals who do not meet the initial standard. For all health-contingent wellness programs, whether activity or outcome-based, the program must provide a reasonable alternative standard (or waive the requirement) for those individuals who do not meet the initial standard so that he or she may otherwise become eligible to receive the reward. The final rules also include sample language that group health plans may use if the plan is required to provide notice to participants of such reasonable alternative standards because the plan or its communication materials describe the terms of the health-contingent wellness program, as opposed to merely mentioning that such a wellness program is available. Finally, the Departments reiterated that compliance with these final rules is not determinative of compliance with any other applicable federal or state law, including the Americans with Disabilities Act. Accordingly, employers should be mindful of additional legal requirements that may apply to their wellness programs. The final rules can be found [here](#).