Compliance Alert

New Guidance on HIPAA Wellness Reward Timing

PROVANT

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Wellness Program Incentives: FAQ Part 74

On August 26, 2026, the Departments of Labor, Health and Human Services, and the Treasury (the Departments) jointly issued FAQs Part 74 addressing HIPAA health-contingent wellness programs. The FAQ provides two Q&As focused on (1) enforcement relief on providing "the full reward" to an individual who meets the reasonable alternative standard after the plan year has begun, and (2) reinforcing language requirements.

While instructive, this new guidance only speaks to what the government enforces, and not practical actions employers can take to reduce private litigation risk from plan participants. To that end, it is best practice for plan sponsors to communicate that all wellness and reasonable alternative deadlines for the upcoming plan year must be met before open enrollment, and include the government's model language in all materials explaining the wellness program (including the Summary Plan Description (SPD)).

Applies To:

- All employers regardless of size, insured and self-insured, who offer a health-contingent wellness program. Meaning, any program tied to a health plan that **requires an activity** which certain individuals with a health factor may not be able to complete (such as a walking challenge that requires that ability to walk), **or requires meeting a health standard** (such as a cholesterol standard or non-tobacco standard).
- Not covered: Participatory wellness programs where the reward is not contingent on a health standard (e.g., reimbursing a gym membership with no requirement for attendance frequency, or rewarding attendance at a health seminar). These programs do not have to meet the health-contingent requirements or offer a reasonable alternative, but must be made available to all similarly situated individuals.

Go Deeper:

The Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination rules, as amended by ACA Section 1201, prohibit a group health plan from varying an individual's eligibility, benefits, or premiums based on conditions tied to a health factor unless strict wellness regulations and guidance are followed. For health-contingent wellness programs (both activity-based and outcomes-based),

WHAT'S NEW

- DOL, HHS, and Treasury issued FAQ Part 74, addressing health-contingent wellness programs under HIPAA
- Enforcement relief: rewards for meeting a reasonable alternative standard mid-year no longer need to be paid retroactively to the start of the plan year — only forward from when the standard is met
- Reinforces (without changing) existing reasonable alternative notice language requirements, including the model disclosure paragraph and doctor-involvement language
- Guidance applies to health-contingent programs only (activity- or outcomes-based); participatory programs remain unaffected

TAKEAWAY

FAQ Part 74 eases enforcement on retroactive wellness rewards, but employers still face litigation risk and should use early deadlines and model language in all wellness materials.

employers must meet several requirements, including a requirement to provide a reasonable alternative way for individuals to qualify for the same full reward, and a requirement to provide notice to individuals of the availability of reasonable alternatives with specific language requirements.

FAQ Part 74

The new relief answers a practical timing question that has recently become a major issue in the recent wave of tobacco surcharge litigation: When an employer allows individuals to satisfy a reasonable alternative standard partway through the plan year, must the plan pay the reward retroactively (all the way back to the first day of the plan year) or only going forward from the date the alternative was met?

Until further guidance is issued, *"the Departments will not take enforcement action against a plan or issuer for failure to provide a reward for satisfying a reasonable alternative standard under a health-contingent wellness program retroactively to the beginning of the plan year where the plan or issuer provides the reward corresponding to the period after the reasonable alternative standard is satisfied."* For example, if the employer allows an employee to complete the alternative in month five after the plan year started, the reward may begin from that time forward and is not required by these updated federal guidelines to retroactively credit the first four months.

This non-enforcement policy represents a departure from the DOL's prior guidance on the subject as represented in the preamble to the 2013 Wellness Plan Nondiscrimination Rules. That guidance explicitly required retroactive reimbursement of the award. Current litigation that has resulted in different courts interpreting the 2013 guidance differently likely spurred this announcement. However, even with this enforcement relief employers are still at risk of private litigation from an individual who feels they should earn the reward retroactively.

Courts have also come to different conclusions regarding the notice of reasonable alternative standard, with some indicating that it needs to be in all materials describing the wellness program and others indicating that it could be sufficient for the notice to be in the SPD and anywhere the wellness program is "described" (versus mentioned). Some courts have also disagreed with the Departments on a requirement to explicitly include language that the employer will work with the employee's doctor, if they wish, on developing a reasonable alternative.

The DOL FAQ reinforces existing reasonable alternative language requirements with no substantive change. They note that a mere mention of the existence of a wellness program would not trigger the disclosure (perhaps attempting to address the issue as it's occurring in lawsuits). However, the employer must show the required language **in all materials explaining the wellness program and reward and must state the employer will work with the employee's doctor, if they wish.**

The model reasonable alternative language paragraph reads:

"Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status."

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The bracketed contact information should be completed with the plan contact who administers alternatives.

While FAQ Part 74 provides enforcement relief from the retroactive surcharge reimbursement and slight clarification on reasonable alternative standard notices, it does not shield a plan sponsor from the consequences of failing to comply with the design, reward limit, reasonable alternative, or disclosure requirements.

Best Practices:

With over 80 wellness lawsuits filed nationwide, employers cannot take wellness program compliance lightly. The risk of such lawsuits can be greatly mitigated by adopting two best practices the government provides (along with one additional best practice) noted below:

- **Set early deadlines.** A previous federal FAQ states employers may set wellness and reasonable alternative deadlines for the upcoming plan year to be wrapped up before the plan year begins. This avoids confusion and complexity, as employees go into open enrollment knowing what rewards they qualify for and there are no possible retroactive rewards.
- **Include model language in all wellness materials and the SPD.** The Departments previously provided employers sample language to disclose the availability of a reasonable alternative to qualify for the same full reward. The language is easy for employees to read and understand, and short enough to include in all materials describing the wellness program, including the SPD. Therefore, best practice is to include that model language everywhere the wellness program is described as well as in the SPD.
- **Exercise caution in tying rewards to receiving a medical exam.** In addition to those two best practices previously provided by the Departments, employers should consider that in the absence of settled EEOC rules on what it takes for a wellness incentive to be "voluntary" employers should seek counsel where they provide an incentive tied to medical exams. Until the EEOC provides updated rules, rewards for completing a biometric screening, annual physical, or testing for nicotine in the body, could move a program into riskier litigation territory.

Consequences of Non-Compliance:

- A health-contingent wellness program that fails any of the five HIPAA requirements loses the HIPAA nondiscrimination exception. As a result, the reward or surcharge becomes prohibited discrimination based on a health factor under ERISA Section 702 and PHSA Section 2705, and the DOL or litigation could require the employer to refund impacted participants for the surcharges imposed.
- Group health plan violations of these requirements can trigger an excise tax under IRC Section 4980D of $100 per day per affected individual, in addition to potential DOL enforcement and participant claims for the improperly imposed surcharge or denied reward.

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