



Benefit Trends

JENKINS
INSURANCE GROUP

Commitment.
To you, your people, your enterprise.

Health Care Reform – Special Edition

Health Care Reform: Wellness Initiatives

LEGISLATIVE BRIEF

June 11, 2010

This memorandum is the ninth installment in our effort to address the critical and imminent changes brought about by the Patient Protection and Affordable Care Act ([H.R. 3590](#); Reform Bill) and the Health Care and Education and Affordability Reconciliation Act ([H.R. 4872](#); Reconciliation Bill), collectively referred to as the Health Care Reform Law.

Why Wellness?

The newly enacted Health Care Reform Law contains no less than six separate statutory provisions directed at wellness programs and initiatives, some of which are currently effective and some of which restate the Bona Fide Wellness Program rules promulgated under the Health Insurance Portability and Accountability Act (HIPAA). One of which will provide grants to small employers for use in implementing wellness programs.

Why Now?

According to MetLife, nearly 40% of employers now offer some type of wellness program. For calendar year plans, employers will begin reviewing their health plan offerings for 2011, taking into consideration mandated plan design changes (no lifetime maximums, extension of coverage to adult children, preventive benefits, non-discrimination testing of insured plans, etc.), as well as budgetary concerns. Many will study the option of wellness programs.

To some, the jury is out as to the ability of wellness programs to change personal lifestyles. The MetLife study says that 50% of individuals who participate in wellness programs do so for the financial incentive; 70% do so because of their desire for good health.

In 2011, small employers (less than 100 lives) may qualify for a Wellness Program Grant (Act Section 10408(a) et seq.). Additionally, state and local governments (as well as Indian tribes) and community-based organizations may also obtain grants as of the date of enactment of Health Care Reform (Act Section 4201).

Small Employer Grants

Qualifying Employers. Employers with less than 100 employees who work a minimum of twenty-five (25) hours per week, who have not previously provided a wellness program may apply for a grant through the Department of Health and Human Services (HHS). The law provides \$200 million dollars for fiscal years 2011-2015 (Act Section 10408(b) and (c)).
Wellness Program Requirements. To qualify for the grant, employers must design a program that includes the following elements:

- Health awareness initiatives (such as health education, preventive screenings, and health risk assessments)
- Efforts to maximize employee involvement and participation
- Initiatives to change unhealthy behaviors and lifestyle choices (such as counseling seminars, and self-help materials)
- Workplace policies to encourage healthy lifestyles, healthy eating, increased physical activity, and improved mental health

Other Wellness Provisions

Rewards. Current law limits employer rewards to not more than 20% of the premium (employer plus employee contributions if any) for single coverage. Effective on January 1, 2014, employers may increase the reward to 30% of the premium for single coverage, or total premium applicable based on family size.

Non-discrimination Rules. Also effective for plan years beginning in 2014, wellness programs will become subject to non-discrimination rules. Programs that offer the same reward/discount to all similarly situated individuals and the reward/discount is not based on individuals meeting a standard related to health status will be deemed to be non-discriminatory. If the reward/discount is based on meeting a standard that is health related, the program will be deemed non-discriminatory if there is an alternative standard or waiver available, and the program meets other quality standards.

Centers for Disease Control. The Health Reform Law also requires the Center for Disease Control (CDC) in conjunction with HHS, to establish and maintain community projects promoting community-based healthy lifestyles (e.g. school lunch programs, physical education programs, and even lifestyle classroom courses). CDC must also develop health lifestyle standards; it must educate employers through the use of workplace training and worksite surveys and must report its results to Congress. The Law also directs the CDC to collect data from employers (Act Section 4303). It would appear the Law will require employers to file annual reports with HHS.

Healthy Aging Program. CDC must develop programs and award grants to state and local agencies, as well as Indian tribes, targeted at promotion of healthy aging for individuals between age 55 and 64. This is a five year pilot program with reports due to Congress. Although it is effective as of date of enactment, and it contains numerous specific criteria, there is no maximum funding limit. The Law basically authorizes appropriations as needed between 2010 and 2014 (Act Section 4202(a)(5)).

Copyright © 2010 Alfred B. Fowler, Attorney at Law and Leavitt Benefit Services.

All Rights Reserved. Reprint with permission only. This Legislative Brief is general in its nature and is no substitute for legal advice or opinion in any particular case. mike@abferisa.com

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.