



## Wellness Programs: Evaluating the Promises and Pitfalls



**P**romoting wellness is essential to improving the health of families and communities. Wellness programs that help people make healthy behavior changes, like exercising regularly or quitting smoking, can improve people's health and reduce their risk of developing chronic diseases.

Employers and insurers that take an active role in promoting the health of their workers or enrollees should be applauded—if they're using evidence-

based wellness programs that improve participants' health while protecting their access to care.

The first priority of wellness programs should be to promote health and well-being, not to shift health care costs to those who already face the greatest health risks. Unfortunately, not all wellness programs are created equal. In fact, some wellness program designs can be harmful to consumers. Particularly for people with health problems or those with lower incomes, certain kinds of wellness programs can actually make health coverage unaffordable and can result in compromised access to health care.

This brief provides an overview of what wellness programs look like today, and it discusses the problems that these programs can pose to consumers' access to care if the programs use certain kinds of rewards or penalties. It identifies how the role of wellness programs in our health care system could change in the coming years, as well as the potential effects these changes could have on achieving the goal of the Affordable Care Act—bringing quality, affordable health coverage to all. Finally, it provides recommendations for several policies that will help ensure that wellness programs do not harm consumers' ability to obtain coverage and care.

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## Wellness Programs Today

While there are some wellness programs that are offered directly to consumers in the individual insurance market and in some states' Medicaid programs, the majority of wellness programs are offered through the workplace. Employee wellness programs have become popular among employers that are looking to control their health insurance costs. Currently, 65 percent of businesses that offer health coverage to their employees also offer some type of wellness program.<sup>1</sup> However, the structure and design of these wellness programs vary substantially. One employer may offer a comprehensive wellness program that includes helpful supports like access to an onsite gym with exercise classes or access to free or discounted weight loss and smoking cessation programs. Another company's wellness program could be much more hands-off, simply giving workers access to online health resources and wellness newsletters.

Many of these employee wellness programs also include rewards or penalties to encourage workers to participate. Today, 58 percent of businesses with 1,000 or more workers use some type of reward or penalty to encourage participation in healthy lifestyle activities.<sup>2</sup> In some workplaces, this may mean that employees who participate in a weight loss program or nutrition class are rewarded with gift cards, cash prizes, or additional paid vacation days. However, some wellness programs are moving in a more troublesome direction: They use rewards or penalties that actually affect workers' health care costs. In these programs, workers may receive a reward (lower health care costs) or a penalty (higher health care costs) based on whether they participate in the wellness program. Either way, the net effect is the same: Some employees pay more than others in premiums, deductibles, or copayments.



### Scenario

The difference between a reward and a penalty in a wellness program can be illusory, because a wellness program reward can result in the exact same negative financial effect on workers as a penalty. To understand this, let's imagine a scenario: An employer decides to offer its workers a wellness program in conjunction with health coverage and wants to vary workers' premiums based on whether they participate in a health assessment and five health coaching classes. The employer decides that workers who participate in this wellness program should contribute \$200 a month toward their health insurance premiums. Workers who do not participate in the wellness program have to pay \$50 more in health insurance premiums each month, or \$250. The employer can achieve this by implementing either a reward or a penalty program.

**Option 1: The employer decides to penalize employees who do not participate in the wellness program**

The employer sets all employees' premium contributions at \$200 a month. If workers do not complete the wellness program, they have to pay a premium surcharge of \$50 a month. If an employee can't attend the health coaching classes because they conflict with a second job, for example, the employee will be assessed the premium surcharge, which will increase her monthly premium to \$250.

**Option 2: The employer decides to reward workers who participate in the wellness program**

The employer sets all workers' premium contributions at \$250 a month, and workers who participate in the wellness program receive a \$50 per month discount on their premiums as a reward. Those who do not participate in the program must pay \$250 a month.

In both Option 1 and Option 2, workers who cannot participate in the wellness program end up paying \$250 a month in premiums, which is \$50 more than the workers who do participate. This is just one example of how wellness programs that use rewards tied to health care costs can have the same negative financial effects on workers as programs that use penalties tied to health care costs.

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An even more troubling aspect of some programs is that they are tying rewards or penalties to whether workers actually *achieve certain health outcomes*, as opposed to simply participating in the programs. For example, some programs tie employee health care costs to whether participants quit smoking or meet certain benchmarks for body mass index (BMI) or blood cholesterol level.

Already, 30 percent of the country's largest employers reward or penalize their workers based on whether they use tobacco, and an additional 21 percent are planning to do so in the future. What is more, 83 percent of the rewards or penalties that these employers use vary workers' premium costs based on tobacco use.<sup>3</sup>

Employer interest in imposing rewards or penalties based on health outcomes other than tobacco use, such as BMI or cholesterol level, is growing exponentially. In 2011, the share of large employers that rewarded or penalized workers based on health outcomes other than tobacco use reached 13 percent, which is more than double the rate for the previous year. An additional 33 percent are planning to adopt rewards or penalties based on health outcomes other than tobacco use in the coming years. Among employers with such reward/penalty programs, more than 40 percent of the rewards or penalties vary workers' premium costs based on workers achieving certain health outcomes.<sup>4</sup>

## Designing a Good Workplace Wellness Program

Wellness programs have the potential to help improve the health of individuals and communities. But to realize this potential, it is critical to make sure that wellness programs are designed in consumer-friendly ways that fully promote health and well-being. Below we list several key actions that employers can take to build good wellness programs.

- **Provide free, evidence-based supports and activities:** Providing people with health resources that they might not otherwise have access to, like free fitness or weight management classes, can enable people to adopt healthy behaviors and can support them through the process.
- **Promote voluntary participation:** Wellness programs should be easily accessible, but participating in them should be a matter of each worker's personal decision. Employers can promote participation by providing a range of activities that take into account different individuals' needs and limitations.
- **Design wellness activities in ways that minimize barriers to participating:** Other obligations, like a second job or family responsibilities, can prevent people from participating in wellness programs. Providing activities in the workplace and during work hours can make it easier for people to participate.
- **Establish office policies that promote health:** Workplace policies, such as providing healthy snacks in office vending machines or offering flex time so that it is easier for employees to schedule doctors' appointments, can foster healthy behaviors and lead to improvements in workers' health.
- **Provide comprehensive health coverage with no cost-sharing for wellness-related services:** Being able to obtain the health care services workers need to prevent illness and maintain well-being is essential to their achieving good health. Therefore, access to comprehensive health coverage, particularly for services that are related to a wellness program's health goals, is an important factor in ensuring that a wellness program will be effective.

## The Effects of Wellness Reward/Penalty Programs

Wellness programs that provide people with robust health tools and activities can enable individuals to adopt healthy behaviors and can support them through the process. However, reward/penalty programs that vary health care costs can harm individuals' health and well-being. Wellness programs with rewards or penalties that vary workers' health care costs based on their achieving specific health outcomes pose a threat to consumers' ability to afford and obtain health coverage and care. This is particularly true for consumers with low incomes and people with health conditions, who may face additional barriers to meeting health status benchmarks.

The bottom line is that these programs can have the same effect as an insurer charging a person more for coverage based on pre-existing conditions—a practice that the Affordable Care Act is designed to end entirely by 2014. Both practices result in people paying higher health insurance costs based on their health risk factors, like high cholesterol, BMI, or blood sugar levels, and both can result in health coverage being unaffordable for those who need it the most.

Even wellness programs that vary employees' health care costs based just on whether they participate in wellness activities (and not on the outcomes they achieve) can threaten the affordability of health coverage for individuals and families. Some people may face barriers to participating in required wellness activities, such as attending a smoking cessation program or regular meetings with a personal health coach, depending on when and where those activities take place and whether they involve a cost to participants. For example, Laramie County, Wyoming has a wellness program that varies employees' health insurance premiums by up to nearly \$1,600 a year. It offers workers discounts on their premiums for completing different wellness activities, including completing a health risk assessment, getting blood glucose and cholesterol testing, and attending one-on-one sessions with a health coach. However, the program requires employees to pay a \$110 fee up front to participate in the health coaching that is required in order to receive a wellness discount on their premiums.<sup>5</sup> If workers are unable to afford this health coaching fee, they could face up to nearly \$1,600 in additional premium costs, potentially jeopardizing their ability to maintain their coverage.

Wellness rewards or penalties that are tied to health care costs may be growing in popularity among employers, but these programs, whether based on health outcomes or just participation, can lead to serious negative consequences for workers and their families.

## ■ What Does the Evidence Say about Reward/Penalty Programs?

While financial rewards and penalties have been shown to increase *participation* in wellness programs, there is less evidence showing that rewards or penalties actually lead to meaningful changes in health behaviors and outcomes.<sup>6</sup> Furthermore, there is currently no scholarly research that has examined the effectiveness of wellness rewards or penalties that specifically raise or lower individuals' health care costs.

Research on using other kinds of financial rewards, such as cash prizes, has yielded inconsistent results. For example, research on giving people financial rewards to lose weight has not found that such rewards have had any significant effect on people achieving sustained weight loss.<sup>7</sup> Regarding smoking, recent studies have found that giving smokers cash payments did increase their chances of quitting smoking, but it's unknown what effect lowering or raising their health coverage costs would have had.<sup>8</sup>

In light of this limited research, it is not possible to draw conclusions about the effectiveness of wellness rewards or penalties that are tied directly to participants' health care costs.

Not only is there a lack of evidence regarding the effectiveness of wellness rewards or penalties that vary participants' health care costs, there is also no accountability mechanism to ensure that, when these rewards or penalties are used, they are done in conjunction with evidence-based wellness programs that can actually help people achieve the health outcomes that are being measured. Under federal regulations that enforce the Health Insurance Portability and Accountability Act (HIPAA), wellness programs that vary employees' health insurance premiums based on achieving certain health outcomes are supposed to have a "reasonable chance of improving the health of or preventing disease in participating individuals."<sup>9</sup> (For more information on HIPAA requirements for employee wellness programs, see the Appendix on page 22.) However, this rule has been defined very loosely, which has permitted the development of reward/penalty programs that lack any supports or resources to help workers improve their health. Under current interpretation, employers are allowed to do nothing more than impose a penalty, such as a premium surcharge, on individuals who do not meet health benchmarks, and then classify the threat of a surcharge as a wellness program. In addition, there are no requirements that wellness programs evaluate or measure whether such programs actually affect workers' health. This means that enrollees could face hundreds or thousands of dollars worth of wellness penalties in programs that may not be able to improve their health.

## ■ Reward/Penalty Programs Can Threaten the Affordability of Health Care

The lack of evidence on whether reward- or penalty-based wellness programs improve health is particularly concerning given the significant impact that reward/penalty programs can have on the cost of health coverage and care. There is currently no limit to how much a wellness reward or penalty can vary workers' health care costs if being rewarded or penalized is based only on whether individuals participate in the wellness program.

Under existing HIPAA regulations (which apply to group plans), employee wellness programs that base rewards or penalties on whether participants achieve health outcomes can vary workers' health care costs by up to 20 percent of the total cost of the premium for employee coverage (including both the worker's share and the employer's share). Clearly, a 20 percent increase in premium costs would be a significant financial burden for many families. In 2011, the average premium for job-based coverage was \$5,429 for individual coverage, with a worker contributing an average of \$921 toward the premium.<sup>10</sup> A 20 percent premium surcharge would result in a worker's premium contribution increasing by nearly \$1,086 to almost \$2,007 a year (see the table below). This would more than double total premium contributions for individuals.

**Employee Contributions to Coverage with 20%, 30%, and 50% Wellness Program Premium Surcharges**

Type of Coverage	Average Premium, 2011*	Average Annual Employee Contribution, 2011*	20% Surcharge		30% Surcharge		50% Surcharge	
			Size of Surcharge	Employee's Total Premium Contribution	Size of Surcharge	Employee's Total Premium Contribution	Size of Surcharge	Employee's Total Premium Contribution
Individual	\$5,429	\$921	\$1,086	\$2,007	\$1,629	\$2,550	\$2,715	\$3,636
Family	\$15,073	\$4,129	\$3,015	\$7,144	\$4,522	\$8,651	\$7,537	\$11,666

\* Data from the Kaiser Family Foundation/HRET *Employer Health Benefits 2011 Annual Survey*.

The 20 percent premium variation that is currently allowed has the potential to price people out of coverage altogether. Unfortunately, this maximum percentage will rise even higher in the coming years. Under a provision of the Affordable Care Act that contradicts the overall goal of the law, in 2014, the maximum allowable wellness reward or penalty that can be imposed based on achieving health outcomes will increase to 30 percent of the total cost of coverage. Furthermore, the Secretaries of Labor, Health and Human Services, and the Treasury have the authority to raise this limit to 50 percent of premiums—a huge amount that would leave many individuals and families unable to afford coverage.<sup>11</sup> The table shows just how large the impact of such premium surcharges would be for individuals and families. A 30 percent increase would nearly triple total premium contributions for individuals, and a 50 percent increase would nearly quadruple them.



In July 2014, a Wellness Program Demonstration Project will allow 10 states to implement outcomes-based wellness programs in their individual insurance markets. And starting in 2017, the Secretary of Health and Human Services could potentially expand this option to even more states.<sup>12</sup> Also, 2014 is the first year in which all insurers in the individual health insurance market will be prohibited from charging people more for coverage based on their pre-existing conditions. However, as with employer plans, the wellness programs in these demonstrations will still be able to vary individual and family health insurance costs by up to 30 percent based on whether participants achieve certain health outcomes. Such reward/penalty programs in the individual market present even greater concerns than those in job-based coverage because many people with individual coverage will be lower- and middle-income people who will need subsidies to help them afford coverage.

Increases in health care costs of 30 percent—and especially 50 percent—will have a serious negative impact on access to health coverage and care. A growing body of research has found that increasing families' out-of-pocket health care costs by even seemingly nominal amounts decreases their use of necessary medical care. Families with higher out-of-pocket health care costs are more likely to delay seeking care or to not obtain care at all.<sup>13</sup> By making health care unaffordable for individuals with pre-existing conditions or health risk factors, wellness rewards and penalties of this size will limit access to health care services for those who most need them.

### ■ **Reward/Penalty Programs Can Disproportionately Harm Vulnerable Populations**

Outcomes-based reward/penalty programs can disproportionately penalize groups that already face additional barriers to maintaining their health and obtaining health care services. For example, racial and ethnic minorities are more likely to suffer from hypertension, obesity, and other health problems for which they may be penalized under wellness programs that use outcomes-based rewards or penalties.<sup>14</sup> In addition, people of color may get poorer-quality health care, which makes it more difficult for them to improve their health and achieve measured outcomes.<sup>15</sup>

Low-income individuals who struggle to afford health care may also face greater barriers to many of the other resources that are necessary to improve health and achieve wellness goals. For example, low-income neighborhoods are less likely to have safe recreation areas or stores that sell healthy foods, making it more difficult for people who live in those neighborhoods to maintain a healthy weight.<sup>16, 17</sup>

Even if a wellness program provides participants with wellness activities, rewards or penalties can unfairly harm lower-income individuals who may face unique barriers to participating in those activities. For example, people who work multiple jobs may be unable to afford taking time off from one job to attend a smoking cessation class that is offered by another job. A single parent may not be able to attend a weight loss program if she can't afford child care during the class.

Wellness programs may even charge an additional fee for wellness activities in which participation is required, as illustrated by the Laramie County wellness program example on page 6. Such costs may be unaffordable for lower-income workers who are living paycheck to paycheck. Thus, even participation-based programs may increase health care costs for those workers who are least able to afford it.

### ■ **Medicaid Wellness Programs: Designing Incentives that Don't Harm Low-Income People**

Under the Affordable Care Act, 10 states have received grants from the Department of Health and Human Services (HHS) to implement wellness programs that reward Medicaid beneficiaries according to whether they demonstrate improvements in health outcomes. Based on the information that is available so far, it appears that many of the states that were awarded these grants have designed consumer-friendly wellness programs with rewards that are not tied to beneficiaries' health care costs.

- Minnesota's Medicaid Incentives for Prevention of Diabetes program will provide beneficiaries who are at risk for diabetes with access to the evidence-based Diabetes Prevention Program, which is taught by trained YMCA staff, at no cost. Participants will have the opportunity to obtain prizes, like vouchers for farmers' markets or healthy foods cookbooks, for participating in the program and for obtaining and maintaining healthy weight goals.
- New York's Medicaid Incentives Plan will reward beneficiaries who participate in smoking cessation courses and who quit smoking with cash prizes and lottery tickets.<sup>18</sup>

It is important to note, however, that in a few states that were awarded grants, it is still unclear whether financial incentives that are offered through their wellness programs will be tied to beneficiaries' health care costs.<sup>19</sup> If these states decide to tie incentives to beneficiary health care costs, those states could seriously jeopardize access to essential care for low-income people who already struggle to get health care services and who face multiple barriers to improving their health.

In both public and private health insurance, rewards and penalties that are tied to health care costs disproportionately harm groups that most need health care and that face the greatest barriers to health improvement.

## Consumer Protections Are Needed to Ensure Access to Affordable Coverage

The Affordable Care Act takes landmark steps to make health coverage affordable for all Americans, regardless of their health status or income. For example, it bans the practice of insurers charging people more for coverage based on their pre-existing conditions or health risk factors (this practice is known as medical underwriting).<sup>20</sup> Furthermore, beginning in 2014, it will provide premium tax credits and cost-sharing assistance to help lower- and middle-income individuals and families afford health coverage and care.

Wellness programs that vary enrollees' health care costs can pose a serious threat to achieving the critical goals of the Affordable Care Act. In truth, wellness programs that vary insurance premiums or cost-sharing amounts are already being used as a backdoor way of doing medical underwriting in some health plans. These programs will threaten people's access to affordable coverage and will undercut the essential consumer protections that were established by the Affordable Care Act if new consumer protections for such programs are not enacted.

### ■ **Protecting Eligibility for Premium Credits for Workers with Unaffordable Job-Based Coverage**

The Affordable Care Act includes several measures that are designed to make coverage more affordable for people with and without offers of job-based coverage, including premium tax credits and cost-sharing assistance. Wellness programs should not undermine this critical assistance.

Starting in 2014, people with incomes up to 400 percent of the federal poverty level (about \$45,000 for an individual or \$92,200 for a family of four in 2012) *who don't have other affordable options* will be eligible to receive premium tax credits to help cover the cost of health coverage.<sup>21</sup> These people will shop for coverage in the new health insurance marketplaces called exchanges.

Some of the people who will be eligible for these premium tax credits will not have access to job-based coverage, but some of them will. The health care law included an important measure that is designed to make sure that people who do have an offer of job-based coverage do not have to spend an unreasonable portion of their paycheck to get that coverage: Workers who would have to pay more than 9.5 percent of their household income toward their premiums will be eligible to receive tax credits to purchase coverage in the exchange. However, in order for these tax credits to truly assist all workers who need help with the cost of health insurance, any wellness penalties that increase workers' health care costs need to be counted as part of their premium contributions when calculating whether their job-based plan is affordable (based on the 9.5 percent standard).

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## Scenario

To understand why wellness program penalties need to be accounted for, let's imagine that these penalties were not counted as part of a worker's premium contribution. For example, imagine a company that offers health coverage that is just barely affordable for workers with incomes at 300 percent of poverty (about \$33,500 for an individual), costing them 9 percent of their income. This employer also has a wellness program that increases workers' premiums by 30 percent of the total cost of coverage (an additional \$1,629 for individual coverage, on average)<sup>22</sup> if their cholesterol level exceeds a preset number. This 30 percent increase would make health coverage unaffordable for middle-income workers who don't meet their employer's cholesterol target, pushing their required premium share well over the 9.5 percent threshold. However, they would not be able to receive premium tax credits to help them buy more affordable coverage if these penalties were not counted toward their premium costs because, without taking the wellness penalties into account, their employer's health coverage would be considered affordable (because its cost would fall below the 9.5 percent threshold).

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Wellness program penalties that raise workers' premiums would make job-based health coverage prohibitively expensive for some of the workers who are unable to achieve wellness requirements. Therefore, future federal guidelines must require that such penalties be counted in people's health care costs when determining whether people with offers of job-based coverage are eligible for premium tax credits because that coverage is unaffordable.

### ■ **Ensuring that Wellness Programs Don't Diminish Premium and Cost-Sharing Assistance for Low- and Middle-Income Families**

When wellness programs are included in the individual market as part of the state demonstration project we described on page 9, exchanges in those states may offer health coverage that includes reward/penalty programs that vary people's health insurance costs. The Affordable Care Act includes a protection that requires that these individual market wellness demonstration projects not result in any decreases in coverage. To assure that this requirement is met, future federal regulations should explicitly prohibit premium surcharges from being allowed in the state demonstration projects: These surcharges are likely to result in a decrease in coverage, as many families will be unable to afford this additional premium cost and will be priced out of coverage altogether.

If such surcharges are not prohibited outright in any state that has a wellness reward/penalty program in its individual market, then it is critical that policies be enacted to prevent wellness programs from undermining the affordability protections in the Affordable Care Act. Under the health care law, individuals and families who receive premium tax credits to purchase coverage in an exchange will not have to spend more than a set percentage of their income for health coverage in a benchmark, or standard, plan. For example, people with incomes at 200 percent of poverty (about \$22,340 for an individual in 2012) will have to spend no more than 6.3 percent of their household income, or about \$1,407 a year, for a benchmark plan. They will receive a tax credit that pays for any premium costs above this threshold, up to the amount of the premium for the benchmark plan.<sup>23</sup> If an exchange benchmark plan includes a wellness program that imposes a premium surcharge on beneficiaries who don't meet certain wellness goals, people with those health risk factors would be forced to pay more in premiums than they should have to under the law's affordability protections. Therefore, any wellness program surcharges must be taken into account first when calculating the amount of people's premium tax credits.

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### Scenario

If a man with an annual benchmark premium of \$5,000 is charged an extra 30 percent because his BMI is above a wellness program target, his premium would go up by \$1,500 a year. This surcharge alone is greater than the *total amount* that a person with an income at 200 percent of poverty is expected to pay for a benchmark plan after receiving a premium tax credit. If the cost of such a surcharge is not included in the benchmark plan's premium cost when calculating the dollar amount of an individual's tax credit, those who are charged such a penalty would have to pay its significant cost out of their own pockets. This would mean that they'd be spending a substantially greater portion of their income on health coverage than permitted under the limits established by the Affordable Care Act. The cost of this surcharge would be unaffordable for many lower- and middle-income individuals and families and could price them out of coverage altogether, which would undermine the intent of the health care law.

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The Affordable Care Act did take one important step toward protecting consumers in wellness programs by requiring that the premium tax credits be calculated based on benchmark premiums before any wellness premium *discount* is applied. However, there is no explicit affordability protection for wellness programs that use a premium *surcharge* as a penalty for not meeting requirements. If premium surcharges are not prohibited in the demonstration programs we discussed earlier, future federal guidelines must require any wellness surcharges to be counted toward benchmark premium costs when calculating the dollar amount of an individual's or family's premium tax credit. This would ensure that people do not have to pay a greater portion of their income to obtain health coverage than permitted under the limits established by the Affordable Care Act.

Protections must also be enacted to ensure that wellness reward/penalty programs do not undermine the cost-sharing assistance that was created by the health care law. To help people who earn up to 250 percent of poverty (about \$27,900 for an individual and \$57,600 for a family of four in 2012) afford their out-of-pocket health care costs, the law established cost-sharing subsidies that will lower the deductibles, copayments, or other cost-sharing for families who qualify. Wellness reward/penalty programs that vary deductibles, copayments, or co-insurance should not result in individuals or families having to spend a higher amount in cost-sharing than the limit for their income bracket under the Affordable Care Act. Future federal regulations must ensure that, regardless of any wellness programs, all eligible families receive the level of cost-sharing assistance that they are entitled to under the law.

## Preventing Wellness Programs from Being Used as a Subterfuge for Discrimination

The previous two sections discuss steps that must be taken to ensure that wellness programs do not undermine affordability of coverage and care for individuals and families. However, there are many other consumer protections that federal regulations need to address regarding wellness programs.

Wellness programs are largely governed by HIPAA, the Affordable Care Act, and the Americans with Disabilities Act (ADA). HIPAA amended three federal laws to prohibit job-based health plans from discriminating against individuals based on any health factor.<sup>24</sup> The regulations for these amendments include requirements that wellness programs must meet to comply with HIPAA (see *HIPAA Regulations for Employee Wellness Programs* on page 22 for more information). These wellness program requirements are now part of federal law, as they are included in the Affordable Care Act. While these requirements include some consumer protections for wellness programs, the protections are not comprehensive or clearly defined.

One of the most important consumer protections in the Affordable Care Act is ending discrimination against individuals with pre-existing conditions. Under the health care law, insurers will no longer be able to charge people more based on their health status or pre-existing conditions. However, wellness programs have the potential to undercut this critical protection if the federal rules governing these programs are not strengthened to better protect against such discrimination.

New federal regulations governing wellness programs will need to be issued to implement other changes made by the Affordable Care Act, including the increased limit on rewards and penalties in outcome-based wellness programs. It is important that future regulations pertaining to wellness programs also include additional provisions to ensure that wellness programs actually meet the consumer protection and anti-discrimination standards currently required by, but not defined in, HIPAA rules.

#### ■ **Ensuring that Wellness Programs Are Evidence-Based and Comprehensive**

Wellness reward/penalty programs should not be used as a backdoor way of shifting health care costs to consumers and discriminating against those with pre-existing conditions. Instead, programs should be evidence-based and should provide comprehensive supports. Specifically:

- Employers and insurers that choose to implement reward/penalty programs that vary health care costs should be required to have an evidence-based justification for that decision. For example, these programs should have to demonstrate that varying health care costs is more effective than using other methods to improve specific health outcomes. They should also have to provide an evidence-based justification for the size of their rewards and penalties.
- Wellness programs that vary health care costs based on health outcomes should be required to provide no-cost, evidence-based supports like fitness classes and health coaching to help participants achieve the outcomes on which they are being measured.
- Wellness programs that vary health care costs should be required to operate in conjunction with health insurance that fully covers services that participants need to achieve health goals, such as smoking cessation and nutrition services.
- Workplace wellness programs that require participation in an activity should be required to give workers access to and time for participating in the activity during work hours.
- Wellness programs should be prohibited from requiring people to pay fees to participate in a wellness activity that is necessary to obtain a wellness reward or avoid a penalty.

None of these essential protections is currently assured under HIPAA regulations. As mentioned on page 7, existing HIPAA regulations and the Affordable Care Act require that a wellness program have “a reasonable chance of improving the health of or preventing disease in participating individuals, is not a subterfuge for discrimination based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease.”<sup>25</sup> However, what programs must do to meet these requirements is not defined. Future federal regulations on wellness programs should clarify that the critical safeguards and supports listed above must be in place in order for a wellness program to be in compliance with both HIPAA and the Affordable Care Act.

### ■ Ensuring the Right to an Alternative Standard

Existing HIPAA regulations and the Affordable Care Act require employee wellness programs that vary health care costs based on health outcomes to offer a “reasonable alternative standard” to, or a waiver from, meeting the program’s requirements for people who cannot safely meet a health outcome due to a medical condition. For example, workers who are unable to safely achieve a wellness program’s benchmark glucose levels because they have diabetes must be provided with an alternative way to receive the wellness reward or avoid the penalty. Examples of an alternative standard could include following a doctor’s recommendations or participating in a class on managing diabetes. An employer could also simply waive the wellness requirement for these workers and automatically qualify them for the corresponding reward or exempt them from the penalty. In addition, under the Affordable Care Act, people who are enrolled in a wellness program have the right to an appeal and, if necessary, an external review of any decision related to whether they are entitled to a reasonable alternative standard or waiver. These important protections are meant to ensure that individuals with pre-existing conditions are not penalized when it’s unsafe for them to achieve certain health outcomes.

These protections, however, do not cover all the rights that workers need regarding an alternative standard or waiver in a wellness program. Further work is needed to ensure that everyone who may need an alternative standard or waiver can receive one, and to be sure that people know about the right to an alternative standard. Regulations regarding the right to an alternative standard should be strengthened in the following ways:

#### ■ It’s critical that workers be adequately notified of their right to request an alternative standard or waiver.

Future federal regulations on wellness program notice requirements should be strengthened so that materials on wellness programs must *prominently* feature a notice of workers’ right to request an alternative standard or waiver so it’s easy



to locate. Program materials should also include a notice of workers' right to appeal decisions as to whether they are eligible for an alternative standard or waiver. This notice should be easy for consumers to read and understand.

- **Future regulations must also better ensure privacy for workers when they request an alternative standard.**

Under the current rules, it may be difficult for workers to obtain an alternative standard for a wellness requirement unless they disclose private health information to prove that meeting the program's goals would be medically inadvisable for them. The process for requesting an alternative standard should not be overly burdensome or violate individuals' right to maintain the privacy of their health or personal information. For example, if an individual requests an alternative standard for a medical reason, an employer should be allowed to ask only for simple written verification from a doctor that the person cannot, or is advised not to, meet a wellness requirement. The employer should *not* be permitted to ask for any medical information, including information related to the medical reason the individual cannot or should not meet a wellness requirement. Future federal regulations on wellness programs should clarify that an employer cannot request private health or personal information from employees who request an alternative standard. Ensuring that this process is not overly burdensome will help eliminate any barriers that individuals may face to asserting and protecting their rights.

- **To ensure that individuals with health conditions receive proper care, it is also critical that, if they prefer, their doctor be involved in their decisions to participate in wellness program activities.**

Wellness programs should not infringe upon the doctor-patient relationship by requiring individuals to meet health outcome goals or participate in certain health activities that may not be in accordance with their doctor's advice. Under existing HIPAA regulations and the Affordable Care Act, wellness programs must offer a "reasonable" alternative standard, but there are no clear criteria for what qualifies as "reasonable." Therefore, it's important that future regulations more clearly define what qualifies as a "reasonable" alternative standard. This definition should clarify that a reasonable alternative standard is one that takes into account an individual's medical condition and any doctor recommendations that an individual needs to follow. This will ensure that neither the alternative standard nor the original wellness requirement jeopardizes the participant's health or medical treatment.

- **The right to an alternative standard or waiver needs to be extended beyond just the workers who face medical barriers to achieving health outcome goals.**

Workers who face non-medical barriers to achieving health outcomes, as well as workers who face either medical or non-medical barriers to meeting participation-based wellness program requirements, should also have the right to an alternative standard or waiver.

There are many non-medical reasons that a person may be unable to achieve a certain health outcome or participate in a wellness program. For example, if a woman doesn't have access to a fitness facility and doesn't live in a safe neighborhood, it may be difficult for her to find a safe place to exercise, which could make losing weight for an outcomes-based program very challenging. A single working dad may be unable to participate in a wellness program nutrition class that is held after work because he has to take care of his family and can't afford child care.

Existing HIPAA regulations and the Affordable Care Act require that wellness programs not be overly burdensome for participants, but currently, there are no clear guidelines for what that means. Future regulations regarding wellness programs should clearly define the term "overly burdensome" and ensure that it takes into account medical, social, economic, geographic, and other personal factors that can be barriers to achieving wellness program goals. Individuals who find meeting wellness program requirements to be overly burdensome based on any of these factors should have the right to request an alternative standard or waiver.

- **Ensuring that Wellness Programs Comply with the Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) also has the potential to affect employee wellness programs. It prevents employers from making medical inquiries or requiring medical examinations of employees unless these actions are "job related and consistent with business necessity,"<sup>26</sup> or unless an examination is a *voluntary* medical exam that is offered as part of an employee health program. Wellness programs should not violate these provisions. No one should feel coerced into participating in a "voluntary" health assessment that is offered by an employee wellness program because the reward or penalty associated with participation could significantly affect the cost of his or her coverage.

Federal regulations should provide a definition of what is considered a "voluntary" medical exam under the Americans with Disabilities Act, clarifying at what point a wellness reward or penalty becomes so large that it is potentially coercive. There should also be federal oversight and enforcement of this standard to ensure that wellness programs are in compliance with the Americans with Disabilities Act.

## What Does an Ideal Wellness Program Look Like?

Consumer-friendly wellness programs encourage individuals to make healthy lifestyle changes but don't jeopardize their access to health coverage and care. This means that consumer-friendly wellness programs do not include rewards or penalties that affect health care costs. Wellness programs do not need to include financial rewards or penalties to support individuals in taking steps to improve their health. Giving beneficiaries a free gym membership or providing healthy foods in the workplace are examples of employer wellness initiatives that don't use rewards or penalties but that do provide workers with wellness supports to which they may not otherwise have access.

Companies that do decide to include rewards as part of their wellness programs can do so without impinging on workers' access to health care. Small rewards like gift cards or an extra vacation day can motivate people to participate in workplace wellness programs without hindering their ability to obtain needed medical care.

Evidence from behavioral economics suggests that small and frequent cash rewards may actually be more effective in producing healthy behavior changes than rewards or penalties that are tied directly to health insurance costs.<sup>27</sup> These types of incentives are already used by companies today. For example, over the past several years, IBM has been using cash rebate rewards to encourage workers to participate in its wellness programs.<sup>28</sup>

## Establishing Best Practices for Wellness Programs

Expanding evidence-based wellness programs that support participants and result in meaningful, healthy behavior changes could greatly improve people's health and prevent them from developing chronic conditions. However, we need to better understand what components of wellness programs are truly effective.

There are currently no evidence-based guidelines that wellness programs must meet. And since companies are not required to evaluate their wellness programs, employers and insurers can continue to implement and use the same wellness activities, rewards, and penalties without ever knowing whether they actually help people improve their health. This means that consumers could face significant increases in their health care costs due to wellness programs that might not even be effective.

These problems can be addressed in the coming years. To implement changes made in the Affordable Care Act, future federal regulations will need to be issued regarding wellness programs, and new consumer protections, like evidence-based best practice requirements, could be added to these regulations. Furthermore, the health care law created multiple opportunities to build a stronger evidence base for wellness programs.

For example, in the coming years, the Department of Health and Human Services (HHS) will be studying the effectiveness of wellness programs, and the findings from these studies can help build a foundation for wellness program best practices. In addition, the health care law requires the Centers for Disease Control and Prevention (CDC) to provide employers with technical assistance in implementing evaluations of their worksite wellness programs. The results of these evaluations can help employers improve their wellness programs to better serve their workers' health needs. In order for wellness programs to be improved overall, the results of these studies and assistance programs should be used to develop strong evidence-based federal requirements that all wellness programs must meet.

## Conclusion

Evidence-based wellness programs can be a powerful tool for improving the health and well-being of individuals and communities. They can lead people to eat healthier, exercise more, and quit smoking, and in doing so, they can help prevent the onset of chronic diseases. However, wellness programs that include rewards or penalties that vary participants' health care costs can actually do more harm than good by jeopardizing access to essential care for those who need it most.

The Affordable Care Act makes landmark strides toward ensuring that, regardless of health status or income, all Americans have access to affordable health coverage. Moving forward, we need to protect the progress made by this law by making sure that wellness programs do not threaten affordability of coverage or care but instead provide the essential supports that individuals and families need to improve and maintain their health.

## Endnotes

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- <sup>10</sup> Kaiser Family Foundation and Health Research and Educational Trust, op. cit.
- <sup>11</sup> *Patient Protection and Affordable Care Act*, Public Law 111-148 (March 23, 2010), as modified by the *Health Care and Education Reconciliation Act of 2010*, Public Law 111-152 (March 30, 2010), Title 1, Subtitle C, Section 2705.
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- <sup>13</sup> Mark Merlis, Douglas Gould, and Bisundev Mahato, *Rising Out-of-Pocket Spending for Medical Care: A Growing Strain on Family Budgets* (New York: The Commonwealth Fund, 2006).
- <sup>14</sup> U.S. Department of Health and Human Services, Office of Minority Health, *Heart Disease Data/Statistics* (Washington: Office of Minority Health, November 19, 2010), available online at <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=3&lvlid=6>.
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- <sup>16</sup> Sarah Treuhaft and Allison Karpyn, *The Grocery Gap: Who Has Access to Healthy Food and Why It Matters* (Philadelphia: Policy Link and The Food Trust, 2010), available online at [http://www.thefoodtrust.org/catalog/resource.detail.php?product\\_id=171](http://www.thefoodtrust.org/catalog/resource.detail.php?product_id=171).
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- <sup>19</sup> Ibid.
- <sup>20</sup> Under the Affordable Care Act, insurance issuers may still vary premiums based on tobacco use such that the premium for tobacco use is no more than 1.5 times the premium for no tobacco use.
- <sup>21</sup> People will be eligible for these tax credits if they do not have another affordable health coverage option through an employer or through a government program such as Medicaid or Medicare.
- <sup>22</sup> Kaiser Family Foundation and Health Research and Educational Trust, op. cit.
- <sup>23</sup> People who choose a health plan option that is more expensive than the benchmark plan must pay the difference between the benchmark premium and the premium for the plan they choose.
- <sup>24</sup> HIPAA amended the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHS Act). Three corresponding federal regulations were issued to implement changes made to these three laws.
- <sup>25</sup> "Nondiscrimination and Wellness Programs in Health Coverage in the Group Market," op. cit.
- <sup>26</sup> *Americans with Disability Act of 1990*, Public Law 101-336 (July 26, 1990), as modified by the *ADA Amendments Act of 2008*, Public Law 110-325 (September 25, 2008), Title 42, Chapter 126, Subchapter 1, Section 12,112.
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## Appendix:

# HIPAA Regulations for Employee Wellness Programs

Under existing HIPAA regulations, employee wellness programs that vary participants' health care costs based on their achieving health outcomes must meet the following standards:<sup>a</sup>

- The reward or penalty for the program cannot be greater than 20 percent of the total cost of the premium for an employee's coverage (including both the employer's and employee's share). Under the Affordable Care Act, this limit will increase to 30 percent of the total cost of coverage in 2014.
- The program must be "reasonably designed to promote health or prevent disease." To meet this requirement, a program must have "a reasonable chance of improving health" and cannot be "overly burdensome," "a subterfuge for discriminating based on a health factor," or "highly suspect" in its methods. However, these terms have not been defined.
- The program must give employees the opportunity to qualify for the reward at least once a year.
- All similarly situated employees must have the opportunity to qualify for the reward.
- An alternative standard or waiver must be provided to employees who cannot achieve a health outcome because it is medically inadvisable or "unreasonably difficult" due to a medical condition.
- The right to an alternative standard must be disclosed in any materials that describe the terms of the wellness program.

Starting in 2014, these requirements will also be enforceable under federal law as part of the Affordable Care Act.<sup>b</sup> Future regulations on wellness programs should define these requirements further so that it is clear which wellness programs meet these standards and which do not.

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<sup>a</sup> "Nondiscrimination and Wellness Programs in Health Coverage in the Group Market," *Federal Register* 71, no. 239 (December 13, 2006); 26 CFR Part 54; 29 CFR Part 2590; 45 CFR Part 146.

<sup>b</sup> *Patient Protection and Affordable Care Act*, Public Law 111-148 (March 23, 2010), as modified by the *Health Care and Education Reconciliation Act of 2010*, Public Law 111-152 (March 30, 2010), Title 1, Subtitle C, Section 2705.

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