

# HEALTH REFORM WEEK

Business News and Strategies for Health Plans, Pharma, Hospitals and Providers

## Reform Law Increases Wellness Incentives — but at What Risk?

While the new health reform law doesn't mandate the use of wellness incentive programs by employers, it does increase the amount of the incentive employers can offer to participate in such programs from 20% of premiums to as much as 50%. That in turn likely will drive more employers to adopt such programs, say benefits consultants. But the law doesn't resolve existing questions about whether incentive programs run afoul of other laws and agencies overseeing them, and more such dollars at stake could place more employers at risk in offering certain incentives, one attorney warns.

Section 1201 of the reform law codifies HIPAA rules governing wellness incentive programs. "The law generally reflects existing regulations, so changes should be minimal for employers that already offer them," Monica Neronha, assistant vice president of legal services and associate general counsel at Blue Cross & Blue Shield of Rhode Island, tells *HRW*.

Under the law, there is no limit to the size of an incentive employers can offer for activities not related to health standards — such as members learning their cholesterol levels, says Angela Bohmann, a Minneapolis-based attorney at Leonard, Street and Deinard, where she chairs the firm's compensation and employee benefits practice. But the law outlines several requirements for incentives based on satisfying a health standard such as achieving a target cholesterol level. For example, a compliant program is not "overly burdensome, is not a subterfuge for discriminating based on a health status factor, and is not highly suspect in the method chosen to promote health or prevent disease," according to the law.

Employers can offer an individual enrollee an incentive of up to "30% of the cost of employee-only coverage under the plan" — including premiums paid by both employers and employees, the law says. The secretaries of HHS, Labor and Treasury may increase the reward to 50% of the cost of coverage if they deem it "appropriate." Bohmann notes that with such high rewards, employees participating in such programs "can wind up getting your coverage for free....It can be a big dollar amount."

"With only about half of employees participating in wellness programs, the boost in allowable incentives under health care reform could encourage employers to demand new offerings from their health plans," says Rob Gillette, CEO of health care IT companies Click4Care and HealthEdge. But, he cautions, "most payers' existing technology systems are not able to accommodate the demands of emerging plan designs that incorporate a strong wellness component."

Currently, about a quarter of large employers reward employees for activities such as taking a health assessment or engaging in a lifestyle coaching program that are not tied to specific health standards, according to Susan Connolly, the Boston-based head of total health management in the United States for Mercer LLC. "Very few employers reward health status, such as offering nonsmoker discounts on premiums or [financial rewards] for meeting certain biometric targets," she tells *HRW*. "The trend is moving in that direction, but it is an emerging practice, not a prevalent one today."

### Conflicting Rules Complicate Wellness Programs

Unfortunately, employers still are faced with conflicting rules governing wellness programs, Bohmann warns. "The health care reform law does a certain amount to encourage employers to put into place wellness programs,...but it ignores some of the other laws that discourage employers from doing it." For example, the Genetic Information Nondiscrimination Act says "you cannot put family history in your health risk assessment if you've got any kind of incentive associated with it," she says. "That discourages some of what the wellness professionals say would be an important component of wellness."

Employers also have to be careful that programs do not violate the Americans with Disabilities Act, which requires firms to provide equal access to compensation and benefit programs. In addition, the Equal Employment Opportunity Commission (EEOC) has told employers in an informal letter that they

"cannot make a health risk assessment mandatory to get coverage under an employer's plan."

The commission hasn't officially ruled on whether such incentive programs are discriminatory, however, Bohmann says. "The EEOC isn't coming out and saying 20% is OK or not OK. But if you go up to 50%, you've more than doubled the amount of the pot of money that's available, and it could be that the EEOC

at that time could say, 'This is just making us too nervous,'" she warns.

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