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**Understanding HIPAA and ACA Wellness Program Requirements:**  
**What Employers Should Consider**

Employee wellness programs are a valuable tool in promoting healthier lifestyles and reducing healthcare costs. When these programs are health-contingent, however, meaning they offer rewards or impose penalties based on health outcomes or activities (e.g., smoking/cessation programs), they must comply with specific requirements under the Health Insurance Portability and Accountability Act (“HIPAA”) and the Affordable Care Act (“ACA”). The U.S. Department of Labor, Department of Health and Human Services, and the Internal Revenue Service have issued regulations that define how these programs must operate.

Below is a breakdown of the five (core) requirements for health-contingent wellness programs under HIPAA and the ACA, along with specific guidance on reasonable alternative standards and program design that employers should consider.

**1. Frequency of Opportunity to Qualify**

Under HIPAA nondiscrimination rules, health-contingent wellness programs must provide participants with an opportunity to qualify for the reward at least once per year. This ensures that employees are not permanently barred from receiving a benefit based on their health status in a previous year.

**2. Size of Reward or Penalty**

The reward (or penalty) must not exceed 30% of the cost of coverage under the plan (this increases to 50% if the program includes tobacco cessation components). “Cost of coverage” includes both employer and employee contributions. Employers should carefully calculate these percentages to avoid running afoul of the nondiscrimination rules.

**3. Reasonable Program Design**

Wellness programs must be reasonably designed to promote health or prevent disease. The program must not be overly burdensome, a subterfuge for discrimination based on health status, or highly suspect in method.

In practice, this means programs should be evidence-based and practical for participants to complete, without inadvertently creating discriminatory or unfair practices.

#### **4. Uniform Availability and Reasonable Alternative Standards (“RAS”)**

Programs must offer the **full reward** to all similarly situated individuals, even if they cannot meet the initial standard due to a medical condition or other factor.

To comply, plans must:

- offer a reasonable alternative standard (or a waiver) at no cost to the employee and notify the employee of the same.
- clearly identify and disclose the RAS.
- provide the same reward to individuals who satisfy the RAS even if they don’t meet the original health standard. For example, someone who completes a smoking cessation program must receive the reward, even if they do not quit smoking.

The plan must ensure that an employee who satisfies the RAS mid-year is awarded the full annual reward, which may require retroactive application (hint – we discuss this further in Part 2 of this series). Employers have flexibility in how this is done (e.g., retroactive lump-sum payment or adjusted premiums), as long as the approach is reasonable.

#### **5. Notice of Availability of Reasonable Alternative Standards**

All materials that describe the wellness program including, but not limited to, summary plan descriptions, open enrollment or benefit guides, etc. must include a notice of the availability of a reasonable alternative standard or waiver, contact information for assistance, and a statement that recommendations from the employee’s personal physician will be accommodated. Failure to provide the required notice can result in noncompliance, regardless of whether an RAS is actually available.

#### **Final Thoughts**

Employers offering wellness programs must ensure their design and administration are fully compliant with the regulations/guidelines established by HIPAA and the ACA. This includes not only adhering to the five key requirements outlined above but also ensuring clear documentation, accurate reward calculations/distributions, and timely disclosures. Failure to comply can expose employers and applicable plans to penalties and legal battles (which we will discuss in Part 2). Employers should periodically review their wellness program materials and consult legal counsel to verify that all elements of the program – including reasonable alternative standards – are properly implemented.

If you have any questions or would like additional information, please contact McKenzie Meade at 205-323-9279 or [mmeade@lehrmiddlebrooks.com](mailto:mmeade@lehrmiddlebrooks.com).