

Wellness Program Requirements

Wellness programs offered **as part of a group health plan** must generally comply with the following nondiscrimination, notice, and privacy protection requirements under HIPAA, as amended by the Affordable Care Act (ACA).

Nondiscrimination Requirements

If a wellness program is part of a group health plan, it must comply with rules created by HIPAA that prevent the employee from being impermissibly discriminated against based on a health factor. "Health factors" include:

- Health status;
- Medical condition, including both physical and mental illnesses;
- Claims experience;
- Receipt of health care;
- Medical history;
- Genetic information;
- Evidence of insurability; or
- Disability.

Participatory wellness programs are deemed nondiscriminatory under HIPAA as long as they are made available to all "similarly situated individuals." HIPAA states that plans may distinguish among employees only on "bona fide employment-based classifications" consistent with the employer's usual business practice. For example, the following employees can be treated as different groups of similarly situated individuals:

- Part-time and full-time employees;
- Employees working in different geographic locations; and
- Employees with different dates of hire or lengths of service.

In addition, a plan may draw a distinction between employees and their dependents, and can also make distinctions between beneficiaries themselves if the distinction is not based on a health factor (e.g., a plan can distinguish between spouses and dependent children, or between dependent children age 26 and older based on their age or student status).

Health-contingent wellness programs are generally deemed nondiscriminatory under HIPAA if they meet the following requirements:

1. Individuals must be able to qualify for a reward at least once each year.
2. The total reward for all of the plan's wellness programs that require satisfaction of a standard related to a health factor is limited – generally, it must not exceed 30% (or 50% for programs designed to prevent or reduce tobacco use) of an employee's cost of coverage for the employee and any covered dependents. If dependents (such as spouses and/or dependent children) may participate in the wellness program, the reward must not exceed 30% (or 50% for programs designed to prevent or reduce tobacco use) of the cost of the coverage in which an employee and any dependents are enrolled.
3. The program must be reasonably designed to promote health and prevent disease.*
4. The full reward must be made available to all "similarly situated individuals." This means the program must allow a reasonable alternative standard to gain a reward (or waiver of the otherwise applicable standard) to individuals for whom gaining a reward is medically unreasonable.*
5. Any materials describing the program must notify individuals about an alternative standard to gaining a reward (or the possibility of a waiver of the otherwise applicable standard)*

* Note that different requirements apply for **activity-only** and **outcome-based** programs in these areas. For additional information on how the five requirements above apply to different types of programs, please [click here](#).

Notice Requirement

Group health plan participants and beneficiaries eligible to participate in a health-contingent wellness program must receive a **Wellness Program Disclosure** in all plan materials that describe the terms of the health-contingent wellness program (both activity-only and outcome-based). For outcome-based wellness programs, this notice **must also** be included in any disclosure of an individual's failure to satisfy an initial outcome-based standard (e.g., a notice that an individual did not meet the BMI target range to qualify for the reward).

If the plan materials merely mention that a program is available, without describing its terms, this disclosure is **not required**.

[Click here](#) to download a model Wellness Program Disclosure.

Privacy Protection Requirements

Where a wellness program is offered as **part of a group health plan**, the individually identifiable health information collected from or created about participants in the wellness program is protected health information (PHI) protected by HIPAA. While the HIPAA Privacy Rule does not directly apply to the employer, a group health plan sponsored by the employer is generally a **covered entity** under HIPAA (an exception exists for self-administered plans with fewer than 50 participants), and HIPAA protects the individually identifiable health information held by the group health plan (or its business associates). HIPAA also protects PHI that is held by the employer as plan sponsor on the plan's behalf when the plan sponsor is administering aspects of the plan, including wellness program benefits offered through the plan. Where a workplace wellness program is offered by an employer directly and **not as part of a group health plan**, the health information that is collected from employees by the employer is not protected by HIPAA. However, other federal or state laws may apply and regulate the collection and/or use of the information.

Additional privacy protection rules apply to wellness programs. [Click here](#) for more information.