Employee Benefits Tracker, Departments issue relief and clarifications on health-contingent wellness programs, (Sept. 1, 2026)

Employee Benefits Tracker

The Departments of Labor, Treasury, and HHS (Departments) have issued new FAQs clarifying two compliance questions involving health-contingent wellness programs: (1) how the agencies will enforce the requirement to provide rewards when participants satisfy a reasonable alternative standard during the plan year, and (2) when plans must disclose the availability of a reasonable alternative standard.

The guidance relates to questions raised in dozens of class-action lawsuits challenging the tobacco surcharges some employers add to premiums for their group health plans through workplace wellness programs.

Enforcement relief. The FAQs address longstanding uncertainty over whether a participant who satisfies a reasonable alternative standard partway through a plan year must receive a wellness-program reward retroactive to the beginning of the year.

Pending further guidance or regulations, the Departments will not take enforcement action against a plan or issuer that provides the reward only for the period after the participant satisfies the reasonable alternative standard, rather than retroactively to the start of the plan year, provided the wellness program otherwise complies with applicable HIPAA wellness-program requirements.

The agencies explained that, although the preamble to the 2013 wellness-program regulations suggested that the full reward should be made available retroactively, the regulatory text does not clearly impose that requirement. As a result, the Departments are exercising enforcement discretion on this issue.

The FAQs emphasize that this relief does not alter other wellness-program requirements. Programs must still be reasonably designed to promote health or prevent disease, must not operate as a subterfuge for discrimination based on a health factor, and must provide a reasonable alternative standard with sufficient time for participants to earn the reward.

Clarification of disclosure requirements. The FAQs also clarify when plans and issuers must disclose the availability of a reasonable alternative standard.

For health-contingent wellness programs, the notice must appear in all plan materials that describe the terms of the wellness program. For outcome-based wellness programs, any notice informing an individual that they failed to satisfy the initial outcome-based standard.

The notice must include:

- contact information for obtaining a reasonable alternative standard; and
- a statement that recommendations from the participant's personal physician will be accommodated.

The Departments reiterated that the notice is not required in materials that merely mention the existence of a wellness program without describing its terms. For example, an SBC that simply notes that cost-sharing may vary based on wellness-program participation does not trigger the disclosure requirement.

SOURCE: *FAQs about Affordable Care Act and Health Insurance Portability and Accountability Act Implementation Part 74*, August 26, 2026**.**

Healthinsurancenews; HIPAAnews; Wellnesssnews; HHSnews; IRSnews; DOLnews

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