



Wellness Regulations

HIPAA (as Amended by ACA) Final Wellness Regulations

- » Only applies to wellness programs that are part of a group health plan.
- » **Participatory Program:** Does not provide a reward or condition eligibility for a reward on satisfying a standard related to a health factor.
 - » Permissible if available to all similarly-situated individuals.
- » **Health-Contingent Program:** Requires satisfying standard related to a health factor to earn a reward.
 - » Activity-Only: Requires performing or completing an activity related to a health factor in order to obtain a reward.
 - » Outcome-Based: Requires attaining or maintaining specific health outcome.

ADA (and GINA) Final Wellness Regulations (to be vacated Jan. 1, 2019)

- » Applies to all wellness programs that include disability-related inquiries and/or medical examinations, regardless of whether the program is part of a group health plan.
- » Applies to both participatory and health-contingent wellness programs.
- » Requirements: (1) Reasonably Designed; (2) Voluntary (includes Notice obligation); (3) Reward Limit; (4) Confidentiality; and (5) Reasonable Accommodation.

REQUIREMENTS FOR HEALTH-CONTINGENT WELLNESS PROGRAMS

Type	Activity-Only	Outcome-Based
Frequency of Reward	Opportunity to qualify once per year.	Same.
Size of Reward	30% limit, but 50% for smoking cessation. Applies to cost of coverage in which the employee and any dependents are enrolled, if the program is available to such dependents.	Same.
Reasonably Designed	Designed to promote health or prevent disease. Cannot be overly burdensome or subterfuge for discrimination.	Same.
Uniform Availability & Reasonable Alternative Standard (RAS)	Available to all similarly situated. Must offer reasonable alternative standard (RAS) or waiver of standard if unreasonably difficult or inadvisable. Can seek verification from physician.	Must allow RAS regardless of whether inadvisable or unreasonably difficult. Provide additional time to comply. Never reasonable to seek verification from physician.
Notice of Availability (in Plan Materials)	Disclose in plan materials availability of RAS. Statement must include contact information and that physicians' recommendations will be accommodated.	Same.

EEOC WELLNESS REGULATIONS COMPARED TO HIPAA RULES

Type	Activity-Only
Frequency of Reward	N/A
Size of Reward	30% limit. No increase to 50% for smoking cessation (but ADA rules do not apply if participant self-certifies). Applies to cost of coverage for self-only coverage, regardless of coverage in which employee enrolled. GINA final regulations permit reward of up to 30% of the cost of self-only coverage for a spouse that completes an HRA. Rewards are not allowed for children of employees.
Reasonably Designed	Promote health or prevent disease. Cannot be overly burdensome or subterfuge for discrimination.
Reasonable Accommodation	Provide reasonable accommodations to enable employees with disabilities to have equal benefits. Employers can fulfill this obligation by offering reasonable alternative standard (RAS) and providing notice of RAS.
Notice	Must distribute separate notice describing how health information will be obtained and used, and who will receive the information. See EEOC sample notice.
Voluntary	Must not: (a) require participation; (b) deny coverage for non-participation; or (c) take adverse action for non-participation.
Confidentiality	Medical information may only be provided to the employer in aggregate form, except as needed to administer the program. Employee cannot be required to share medical information or waive confidentiality as a condition for participating in program. A HIPAA covered entity will comply if it complies with the HIPAA Privacy Rule.

